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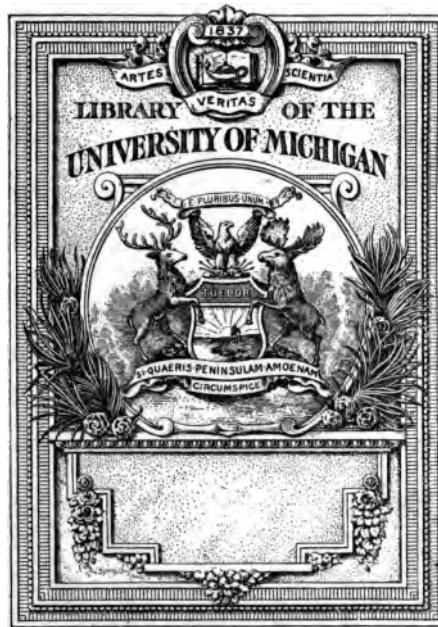
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# STANDARDS OF PUBLIC MORALITY

BY

ARTHUR TWINING HADLEY,  
PRESIDENT OF YALE UNIVERSITY

THE KENNEDY LECTURES FOR 1906, IN THE SCHOOL OF  
PHILANTHROPY, CONDUCTED BY THE CHARITY  
ORGANIZATION SOCIETY OF THE CITY  
OF NEW YORK

New York  
THE MACMILLAN COMPANY  
LONDON: MACMILLAN & CO., LTD.  
1907

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Set up and electrotyped. Published June, 1907.

Norwood Press  
J. S. Cushing & Co. — Berwick & Smith Co.  
Norwood, Mass., U.S.A.

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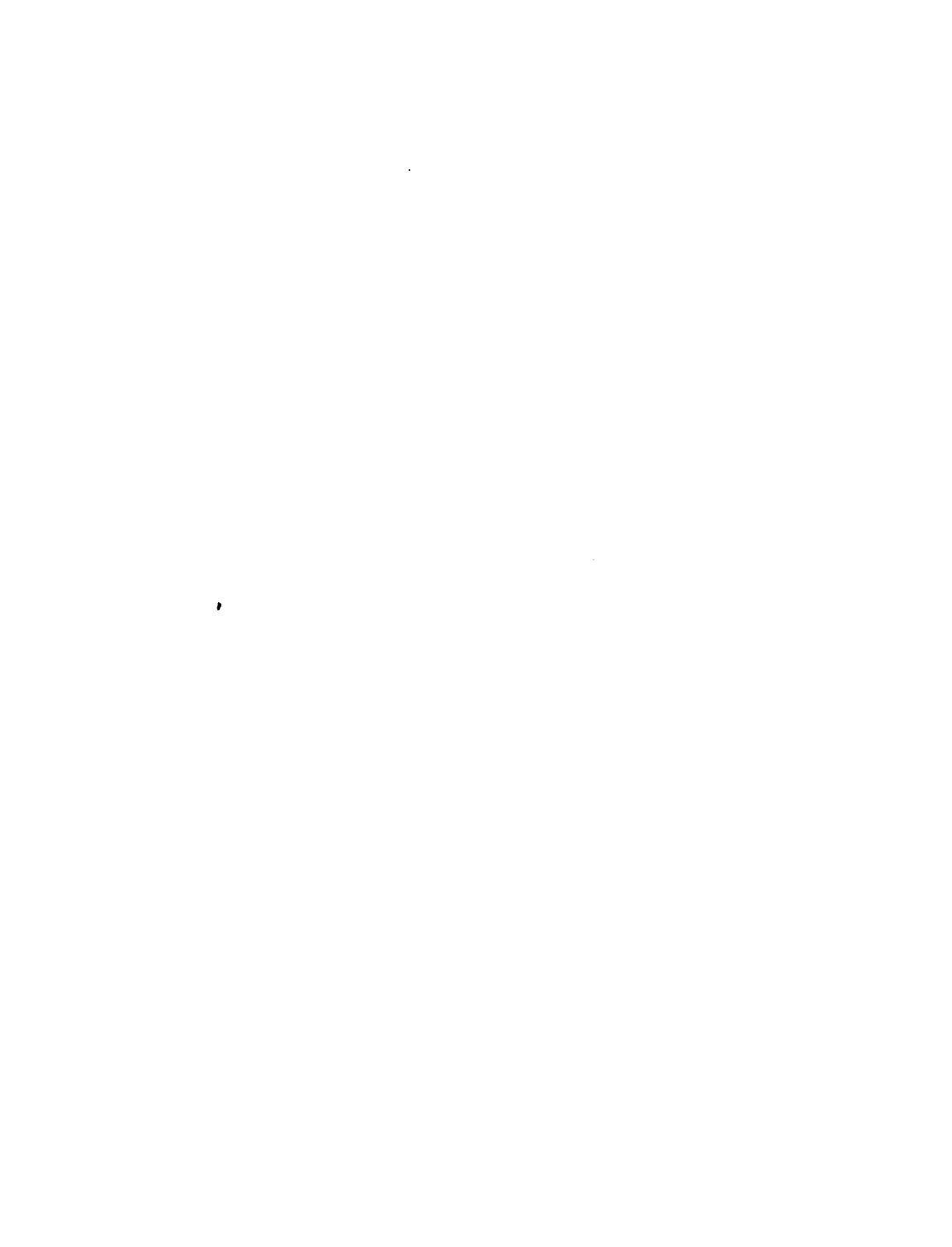
## PREFACE

THE five chapters of which this book is composed were delivered as lectures on the John S. Kennedy Foundation in New York in November and December, 1906. The manner of treatment and choice of illustrations show that they were originally intended for the platform rather than for the printed page. It has not, however, been thought wise, in so short and unpretending a book as this, to make any serious change in their form.

Should any one take up this book a few years hence, the author hopes he may find that, though the events in the foreground have changed, the underlying principles yet remain of value.

NEW HAVEN, May, 1907.

11-17-30 AVM  
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## CHAPTER I

### THE FORMATION OF PUBLIC OPINION





## CHAPTER I

### THE FORMATION OF PUBLIC OPINION

ONE of the strangest features in the life of the American people at the present day is the contrast between its standards of private and of public morality.

In private the typical American citizen bears an excellent character. With the weak he is courteous; with the strong, self-respecting; with all, helpful. He uses his powers and advantages unselfishly. He does not employ his strength to elbow his way to the front through a crowd of women and children. He does not employ his cunning to overreach his neighbors and friends. In great emergencies, like fire or flood or railway accident, it is not the mean and selfish side of human nature which comes prominently to the front in the conduct of our countrymen, but the large and helpful side. We are glad to believe that the heroism shown at these times of crisis is but a manifestation

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of the ordinary intentions and ideals of our American men and women, which they are showing in thousands of little acts of daily self-sacrifice of which we never hear.

But with our public morals the case is different. In each of our two chief forms of organized social activity — business and politics — we have to record a different story. The man whom you could trust to help a weaker neighbor will nevertheless go to all lengths to hurt a weaker competitor for money or for office. A man who in private life would despise snobbishness and servility of every kind will in business or politics cringe to the stronger power for the sake of his own personal advantage. The instinct to serve others which we feel in our private relations gives place to an instinct to serve ourselves in commercial or political ones. And when some special emergency draws public attention to the real methods which men are using and the real standards to which they hold, like the insurance investigation in New York or the political upheaval in St. Louis, we find ourselves confronted, not with unexpected heights of self-sacrificing heroism, but with unexpected depths of selfish deceit.

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The man who hears the results of recent investigations is apt to exclaim against the depravity of the men who manage our business or our politics. This is a very superficial way of looking at the matter. If here and there some individual misuses his money or his office, we are justified in putting the blame upon him individually. But if a large number of people are misusing their money or their offices, the fault cannot be theirs alone. The community is a partaker in that fault. The chief trouble lies in the public standard of morals. A great majority of the industrial and political leaders who have done the most harm are very excellent men according to their lights. They are kind to their families, true to their friends, and ready to make almost any effort to help those to whom they deem themselves under obligation. Most of them would scorn to tell a lie except in the way of business, as the old proverb runs. If an investigation shows them the real character of the things they have been doing, they die of broken hearts — not, as people commonly think, because they are afraid of going to jail, but because they are honestly ashamed and repentant.

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The blame for misuse of industrial or political power is, I repeat, ours just as much as theirs. For it is the standards that are at fault, and we as well as they have a share in making the standards.

“What!” you will say, “are we, who never owned a share of railroad stock in our lives, to blame for railroad rebates? Are we, who pay the prices charged by monopoly, to blame for the abuse of the power of industrial combination?” Yes. The man who in his own grocery store encourages his clerk to let the scales weigh a little too heavy for the customer who does not notice or is too self-respecting to make a fuss about it, has deprived himself of the chance of saying anything effective against railroad rebates. The man who has tried to create an artificial demand for labor by slow work or unfinished work, or any other of the devices known to the trade, has become a partaker in the responsibility for all the worst evils for which he has upbraided the great monopolists. Any condemnation of trusts on his part is a mere matter of words. He is abusing them for doing on a large scale what he has been trying to do on a small scale.

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In like manner, the man who contributes to campaign funds because he regards such contributions as good investments has deprived himself of the chance of criticising corrupt politics. The man who in the choice of representatives or advocacy of measures looks to his own interest instead of the interest of the body politic is a partaker in the political sins under which we suffer.

The chief cause of difference between our private and our public morality is that public sentiment is clear in one case and obscure or self-contradictory in the other. In private life we despise in ourselves and our friends the things which we condemn in our enemies. This makes our condemnation effective. In public matters, whether of business or of politics, our judgment is too often that of the lips rather than of the heart. We condemn a man for succeeding when his success is detrimental to us; but for the most part we have allowed ourselves to get a little money or a little political influence by methods which are so much like his that it takes all the force out of our condemnation. No wrong was ever stopped

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by the talk of men who objected to that wrong chiefly because somebody else got the benefit of it. No legislation ever did much real good when the people who made the laws were not ready to apply the underlying principles of those laws against themselves.

A few years ago the legislature of one of our south-western states passed a most stringent act punishing commercial combination by fine and imprisonment; providing, however, that nothing in that law should apply to combinations of cattlemen. A law against the stranger, an exception in favor of one's self and one's friends! Unfortunately this is a type of commercial statute and commercial morality which is all too prevalent to-day.

We may prevent certain specific practices by statutes which make them misdemeanors; but in so doing we have simply cut off one way of reaching an end. Men will get the same result by another route. It is not enough to hinder men from obtaining money or office in certain specified ways. We must so shape their ambitions that they do not wish to obtain money or office by means that injure the community. We must

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get them to consider public selfishness as dishonorable a thing as we now consider private selfishness. If a man to-day crowds himself out of a theatre, leaving behind him a trail of bruised women and children, the very newsboy in the street will hiss him when he gets to the door. Such a man will be despised by the public, and in his heart he will despise himself, for taking advantage of his strength to crush others. But if a man gets money or office by analogous processes, the world is inclined to admire the result and forgive the means; and the man, instead of despising himself for his selfishness, applauds himself for his success. He applauds himself because others are in their hearts admiring him; and as long as he has this admiration he cares not for editorial attacks, or denunciatory sermons, or even laws to restrain his activity. He takes these things as tributes — inconvenient but inevitable tributes — to the magnitude of his own success.

The thing that governs us is public opinion — not the nominal public opinion of creed or statute book, but the real public opinion of living men and women. Whatever the intelligent and influential world regards

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as success, ambitious men will try to achieve. Whatever means the intelligent and influential world condones in its work, the ambitious man will practice in his. On the other hand, whatever ends the world regards as dishonorable, strong men will refuse to pursue; and whatever means people disdain to use in their own interest, the strong man will reject and spurn. This dependence upon public opinion is not simply a present fact; it is a necessary basis of all free government. Unless the strong men are bound by public opinion and care for the approval of their fellow-men, civil liberty is impossible; people can only be held in their places by a system of tyranny. It is because men want to do what others approve, and because they despise themselves unless they conform their own conduct in some measure to the standards and needs of those about them, that constitutional government is possible.

This common sentiment or sense of the community, of which each man is the trustee, is the really active agent in free government. Legislatures and courts, police and armies, may supplement its behests; they never can take the place of them. The police may

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occasionally arrest an individual; the courts may sometimes punish him; but they cannot make a law sacred unless the majority of people acquiesce in its wisdom without waiting for the police to arrest them and for the courts to punish them. Legislation may render public opinion effective in some cases where its application would be obscure; but legislation which attempts to anticipate public opinion instead of defining it becomes a dead letter or a laughing stock. The boy at school recognizes the obligations imposed by the public opinion of his fellows far more clearly and consistently than he obeys the rules imposed by the master. The professional man will hold to his code of professional ethics after he has let all other ethics go; for to forfeit the opinion of those with whom he is associated is a greater evil than to lose life or liberty or chances of eternal salvation. Once let public sentiment be clear on a certain point, so that a man will enforce it against himself just as much as he does against others, and public sentiment can accomplish anything.

But *why* is there this difference in the way we enforce our standards of public and private morals? Why do

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we apply our rules of private morals strictly and our rules of public morals loosely? It is because our experience in the one case has been much longer than our experience in the other. Men have been trying to live in peace and harmony with those about them for so many thousand years, that we know what is needed to keep the peace. But there have been so few hundred years since we began experimenting with the present commercial and industrial system, that we do not yet know what virtues are needed for its maintenance. We know pretty well what sort of duties a man ought to perform toward himself and toward his neighbor whom he can see. We are not sure what sort of obligations he should recognize toward the larger world which he cannot see.

Centuries of experience have made it perfectly obvious to us all that intemperance is bad, that cruelty is bad, and that breach of personal trust is bad; that a man should support his family, stand by his friends, and help those about him when they are in trouble. These rules have become so well established that we apply them impersonally. We not only condemn our

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enemies for breaking them, but we condemn our friends and ourselves with equal sharpness. In the field of private morals we have little difficulty in dividing people into good and bad. The good are those who fulfil the obligations and meet the moral standards which public opinion has set; the bad are those who repudiate the obligations and fall short of the standards. The ethics of the situation are generally clear.

But in public morals, whether commercial or political, the case is quite different. The ethics of the situation are not generally clear. There is no such consensus of public opinion as to the obligations which a man ought to assume. Society, as I said a moment ago, has not had time to watch the consequences of selfishness in politics as it has watched the consequences of selfishness in private life. In private matters we have a definite code which meets certain clearly understood needs; and we can say of the man who fails to meet its requirements that his morals are bad. In public matters our code is indefinite, and our understanding of what we really need is often obscure. Even if a man is doing great harm to his fellow-men through

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his blindness to public wants or his selfish administration of public trusts, we cannot be quite certain that he is morally bad. His fault may be due to defective ethics rather than to bad morals. He is not necessarily defying an obligation which he, in common with all other men, understands and recognizes; he may be failing to recognize an obligation because he does not understand it.

We have no universal public opinion on these questions. We have sections of public opinion, working separately and often pulling apart. The *Tribune* appeals with confidence to the public opinion of one set of people; the *Post* to the public opinion of a somewhat different set; the *Journal* to the public opinion of a set far different from either. The facts, views, and motives which are familiar to the readers of one of these papers are unfamiliar to the others. Each group believes that its opinion represents a real understanding of the needs of the people, and that the views of the other groups represent the arguments of selfish hypocrites, doubly detestable because they take the form of an appeal to public interest. In the face

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of difficulties and schisms of this kind, it sometimes seems as if there were no common ground to which to appeal; no set of facts sufficiently known to all men to serve as a starting-point in the discussion of public affairs; no opportunity for getting on to a universal basis of sympathy in the domain of public morals corresponding to that on which we stand in our private morality.

One of the great difficulties which beset the newspaper editor when he tries to discuss public questions is the fact that most of his readers have a strong pecuniary or personal interest in having them decided in some particular way. The man who owes money likes all the arguments in favor of a depreciating currency, and is suspicious of those on the other side. With the man who has money due him the case is reversed. The man who employs labor feels the need of giving the largest amount of control to him who risks his capital. The arguments in favor of the rights of the capitalist employers seem to him strong; all efforts to limit those rights savor of immorality. The laborer, on the contrary, who works for another man, feels that he, in

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giving his effort and perhaps risking his life, has far more to do with the product than the man who has simply invested his money. He looks with favor at every argument concerning the rights of labor, and with disfavor at any argument or precedent which seems to support the claims of capital. If an editor wishes to make his paper popular with a certain class, he lays stress on the arguments which that class likes and feeds them with the facts which they want to believe. His readers gradually get into a position where their prepossessions have been strengthened until they become prejudices, and where misinformation has been added to prejudice until it becomes almost irremovable.

There are right ways and wrong ways of getting at economic truth. If we start from discussion of those present-day problems where people are most prejudiced, I think we are adopting the wrong way. A few years ago, when I was receiving final instructions for a somewhat delicate negotiation, I said to my chief, "If the issue is forced upon us, there is, I think, nothing to do but to tell the truth;" and my chief, with the wisdom born of many years' experience, replied, "Even then, not

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*butt end foremost.*" As long as we present truths concerning public policy ~~butt end foremost~~ to people who have an interest in not accepting them, we shall never carry conviction with us. But if we start from past history and study the development of the various rights and usages, we have a far better chance of arriving at a common understanding. People can look at the contests of past generations more dispassionately than at their own; and they are more ready to accept a legal or moral principle which bears a little hard upon their own interests if they see that it resulted from public necessities in the past than if they think it was specially trumped up for the occasion by some personal enemy of their own. I may be oversanguine in my confidence in what this historical study will do; but I have generally observed that when a man sees that a measure has been framed in the public interest he accepts its consequences, even when they hurt him personally; and that if he once believes that a general rule is a general rule and not a piece of class legislation directed against him and his friends, he will lend his aid in its enforcement. This way of looking at things is known as public

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spirit; and it is because the American people has, at the bottom, a great deal of this public spirit, that it has been able to enjoy freedom for more than a century. If here or there this spirit to-day seems dormant, I believe that this is due more to the lack of clear understanding of the problems at issue than to any deterioration in our moral fibre which unfits us for the exercise of freedom.

Therefore, when one man makes liberty his watchword, and another democracy, and a third relies on constitutional safeguards; and when the three men, starting with these different premises of political ethics, reach diverse and irreconcilable conclusions;— the only way of bringing them together is to trace the origin of liberty and of democracy and of constitutional safeguards. When we look at the matter in this way, we shall see that not one of the three represents a fundamental principle of morals or politics; that each has been adopted and accepted as a means to the strength and progress of the community, rather than as an end of strength and progress; that when any one of the three is thus made an end instead of a means, or re-

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garded as a postulate of right thinking instead of an incident of right living, it fails of the very purpose for which it exists.

Five hundred years ago our ancestors had a coherent and well-defined system of public opinion on public matters as well as private ones. It was not what we should call a good system; but, such as it was, it commanded almost universal acceptance. The public opinion of those ages held that each man was born to fill a certain niche or place in society. His duties as a member of the body politic were sharply defined for him by a series of traditions. He was to take the same trade which his father had before him; to make such goods and charge such prices as were fixed by tradition and enforced by the magistrates; to perform such part in public affairs, and only such part, as belonged to his station. At all points which the law could reach he was closely hedged about; and where the law could not reach him, public sentiment compelled him to accept the dictates of the Church as to what he should think and believe. Each man was but one very small wheel

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in a large machine. Unless that wheel ran as had been ordered, men thought that the whole machine would fall out of gear. This was the essence of the feudal system. The codes of law with which we identify that system were but its externals. The real heart was found in its dominant public opinion, that kept each man in the place where he was born and set rules for all his actions as a member of an industrial and political community.

But there came a time when people ceased to be content with the dictates of this inherited opinion — a time when they wanted to make their own place in society, and serve the community in their own way instead of the way which tradition prescribed. Such men were at first treated as heretics and reprobates. But the communities which gave ear to the new doctrines and tolerated the new methods prospered, while those which altogether strove to repress them fell behind. The new methods began to displace the old by a process of natural selection.

At the end of the fifteenth century two events occurred which gave the death-blow to the old system of author-

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ity, and paved the way for the development of the new system of liberty. One was the invention of printing; the other was the discovery of America. The former gave every man who had new truth to preach an opportunity to spread it abroad, whether the authorities liked it or not. The latter gave to every man who had new modes of action to suggest a chance to try those modes on a large scale, free of the interference which he would have had at home. Slowly but surely the printed book had its influence in unsettling old methods of thought; slowly but surely the New World experiments had their influence in readjusting and reorganizing Old World methods. There is no time to trace in detail the history of this change. Suffice it to say that in the course of four centuries we passed from a system of status, wherein each man was born into a set of rights and obligations which he could not change, to a system of liberty under which each man was encouraged to serve society in his own way for better or for worse.

Speaking broadly, there is no doubt that this system has justified itself. "It reposes," to quote the admirable words of John Morley, "on no principle of abstract

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right, but on principles of utility and experience. Mr. Carlyle, and one or two rhetorical imitators, poured malediction on the many-headed populace, and with a rather pitiful impatience insisted that the only hope for men lay in their finding and obeying a strong man, a king, a hero, a dictator. How he was to be found, neither the master nor his still angrier and more impatient mimics could ever tell us.

“Now Mr. Mill’s doctrine [of liberty] laid down the main condition of finding your hero; namely, that all ways should be left open to him, because no man, nor majority of men, could possibly tell by which of these ways their deliverers were from time to time destined to present themselves. Wits have caricatured all this, by asking us whether by encouraging the tares to grow, you give the wheat a better chance. This is as misleading as such metaphors usually are. The doctrine of liberty rests on a faith drawn from the observation of human progress, that though we know wheat to be serviceable and tares to be worthless, yet there are in the great seed-plot of human nature a thousand rudimentary germs, not wheat and not tares, of whose

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properties we have not had a fair opportunity of assuring ourselves. If you are too eager to pluck up the tares, you are very likely to pluck up with them these untried possibilities of human excellence, and you are, moreover, very likely to injure the growing wheat as well. The demonstration of this lies in the recorded experience of mankind."

This is the true doctrine of liberty. But there are a great many people who, seeing the truth of this doctrine, have taken a further step that converts its truth into falsehood; who believe that because we have found it wise to let individuals serve society in their own way, we may therefore let them have their own way in everything, with the assurance that they will serve society in spite of themselves; that the selfishness of all men, pulling apart and working for their own interest, can by some occult process be trusted to promote the common interest. For this extreme theory there is not one shadow of justification in human history. But in these days true and false doctrines of liberty are so interwoven that the men who see the good of the right kind of liberty are prone to shut their eyes to the evils of the

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wrong kind; while those who see the evils of the wrong kind of liberty are equally blind to the inestimably great good which the right kind of liberty accomplishes.

To kings and nobles and prelates, and other beneficiaries of the feudal system, the doctrine of liberty in its true form, no less than in its false one, was a very unwelcome thing. As a matter of course, they resisted it. In some countries, notably in Spain, they were successful, and succeeded in checking the growth of liberty at the loss of national vitality and national progress. But in England, in France, and in Germany, the forces on the two sides were more evenly balanced. There was a conflict which lasted for centuries between the feudal governments on the one hand and the champions of liberty on the other. Out of the resistance of these governments to liberty grew the modern system of democracy. The people as a body tried to take the business of governing into their own hands, as a means of preserving liberty against the encroachment of privileged classes. The fundamental theory of this democratic movement was that all just government was based on the consent of the governed.

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This underlying theory of democracy was as sound as the underlying theory of liberty. Unfortunately it was just as easily subject to perversion. Not content with saying that all just government was based on the consent of the governed, the enthusiastic advocates of democracy held that if you could only find what a majority of the governed wanted, you could wisely incorporate it into law. Never was there a greater practical error. Public law, to be effective, requires much more than the majority to support it. It requires general acquiescence. To leave the minority at the mercy of the whims of the majority does not conduce to law or good government or justice between man and man. Even Rousseau, the leading apostle of modern democracy, saw this most clearly. He said in substance: "A majority of the people is not the people, and never can be. We take a majority vote simply as the best available means of ascertaining the real wishes of the people in cases when it becomes necessary to do so." But Rousseau's followers, who believed in the infallibility of majorities, did not stop short in the application of their theory until they had

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produced the helpless anarchy which preceded the adoption of the Constitution of the United States, or the reign of terror which preceded the reëstablishment of a strong personal government in France. For the principles of extreme democracy and of extreme liberty, though often proclaimed by the same persons, are inconsistent in practice and in theory. The right of each man to consult his own interests and the right of a majority of men to sacrifice the interests of the minority are absolutely irreconcilable with one another.

The people who were charged with the practical work of governing democratic countries saw this difficulty; and they tried to provide against it by the adoption of constitutions. These constitutions erected traditional or vested rights as a bar against the excesses of individual liberty on the one hand; and, still more important, against the excesses of unrestricted powers of the majority on the other. The Constitution of the United States is perhaps the best example of a practical instrument of this kind. The preamble indeed asserts unqualified rights to liberty and unqualified adherence to the principles of democracy; but the instrument

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itself is occupied with establishing safeguards for property and contract against the violence of liberty, and for orderly development of the law against the disorderly demands of majorities. The success of our Constitution has been so great that a very considerable proportion of our people make it the starting-point of their reasoning on industrial and political morals. But the theory of the sovereignty of the Constitution is in effect a denial of the principles both of liberty and of democracy. There is nothing self-evident or axiomatic about the Constitution of the United States. It was adopted because the public opinion of Americans at the end of the eighteenth century acquiesced in the practical wisdom of its provisions. Those who take their stand on the letter of these provisions to-day are bound to take pains to keep public opinion of the twentieth century behind them — not simply their own public opinion and that of their friends, but of the great body of the governed on whose consent constitutional government must rest.

Liberty, democracy, and constitutional government are each in their place invaluable means to the public

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interest. Liberty is essential to progress, democracy is needed to prevent revolution, constitutional government is requisite for that continuity and orderliness of living without which no worthy life is possible. But when any one of these principles is made not a means but an end which justifies its use in the interests of a class, instead of the general interests of society, it becomes a menace instead of a protection. Liberty is good as a means of allowing each man to serve society in his own way; it is bad when it is used as a means of allowing him to serve himself at the expense of society. Democracy is right when used as a means of keeping the government in touch with public opinion; it is wrong when it encourages a temporary majority to say that their vote, based on insufficient information or animated by selfish motives, can be identified with public opinion concerning what is best for society as a whole. Constitutional safeguards are absolutely necessary to make any measure of liberty or democracy possible; but when they are used to protect the liberties of a class bent on its own interest rather than on the general interest of society, they cease to be a safeguard and

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become a source of peril. Applied unselfishly and with primary regard for the public interest, liberty, democracy, and constitutional law work to a common end. Applied selfishly, for the benefit of different classes, they are inconsistent in their results; and any one of the three thus selfishly applied may become dangerous to the stability of social order.





## **CHAPTER II**

### **THE ETHICS OF TRADE**





## CHAPTER II

### THE ETHICS OF TRADE

**I**S a man justified in buying as cheap as he can, and selling as dear as he can? This double question is the fundamental one in the ethics of trade. If we say yes, how can we excuse the evils which result when we pay some people less than a living wage for the things that they produce, and give others extraordinary profits on things which have cost them little? If we say no, where are we to draw the line between just profits and unjust profits in trade?

Different ages have answered this question quite differently. The ancients had no trouble at all with it. They said, "No, he is not justified either in buying cheap or in selling dear." The ancients not only gave this answer, but they went to the logical conclusion. They said: "All trade is a bad thing. It is robbery. In fact, it is a particularly cowardly mode of robbery."

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According to the ancient view, the man who went out and held up a railroad train was a decidedly more respectable man morally than the man who made profit out of buying and selling the stocks of the road. For the man who held up the train risked his life in a fair fight, and the people who let him steal their money were cowards; while the man who bought the stock of the road cheap and sold it dear risked nothing, and very likely took away the money of respectable people who trusted him. Holding, as Aristotle did, that trade was essentially base, he and his followers had no difficulty in condemning the profits of trade.

But however strongly the ancients might have urged this view in theory, they never were able to get it carried out in practice. Trade was a necessity, whether they liked it or not. The fact that the moralists stigmatized it as bad only prevented them from having the influence which they otherwise might have had on the way that it was conducted. Their position was like that of the chaplain of the Spanish regiment to which Captain Dugald Dalgetty was attached; who, when the captain inquired of him whether he might or might not lawfully

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do certain things, responded (after the third glass of wine) that as he was bound to be damned as a heretic anyway a few sins more or less didn't seem to him to be a matter of any particular importance. The writings of the Roman lawyers frankly assume that trade is and must be independent of moral considerations. Paulus, for instance, states explicitly this fundamental principle of the civil law: "In buying and selling a man has a natural right to purchase for a small price that which is really more valuable, and to sell at a high price that which is less valuable, *and for either to overreach the other.*"

Until the tenth or eleventh century the extreme views of the moralists on the one hand and the lawyers on the other were maintained side by side in irreconcilable shape. But in the later Middle Ages there was at least an approach toward reconciliation. The moralists of that period, of whom Thomas Aquinas was the great leader, recognized that trade was a necessary thing and that its profits were therefore to a certain extent legitimate. They said that the gain itself was not bad, but the covetousness or unlimited desire to gain; and

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they attempted to arrange a system of ethics under which just and moderate gains could be distinguished from unjust or immoderate ones. They held that every article had its value or proper price, represented in a general way by the amount of labor which had been involved in its production. So long as a trader was content with a price of this kind, he rendered a valuable service to society by giving it the articles it wanted in the places and times where they were needed; and he might properly charge for that service as an essential element in the just price of the article. Some of the moralists went even farther, and said that in case of special scarcity of an article and exceptional need for its use, the trader might be held to have performed a service of exceptional value; and as long as he did not buy with the *intention* of making these exorbitant profits he might legitimately avail himself of them when they came through the gift of Providence. This last concession was, however, exceptional. Most of the mediæval moralists held that it was as bad to take advantage of a scarcity as it was to deceive the public as to the kind of goods which were being sold.

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This idea that each article has a value or just price, based upon its cost of production, and that trade is moral or immoral according as the trader bases his charge upon this cost, was at one time quite universal, and is held by many persons even at the present day. It is the fundamental principle of Marx's book on Capital, the economic Bible of the socialist. But the attempt to carry this theory out in practice, to make it a workable standard for the conduct of trade instead of a somewhat vague economic ideal, has been attended with much difficulty.

To begin with, while it makes provision against extortionate profits by the trader on some articles, it does not say how he is to be protected against losses on others. What will happen if buyers are not prepared to pay a price for the article which covers the cost of production? You cannot compel a man to purchase when he would rather go without the article than pay the price charged. You cannot compel the trader to leave the goods unsold on his shelves because the just price is not forthcoming. You must let him sell at a loss. But if he sells some things at a loss and is only

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allowed a fair profit on others, his business in general is a losing one. He must be allowed to make extra charges on the things that the public will buy, to make up for his failures on the things the public will not buy.

But there is a deeper practical difficulty than this. The attempt to prohibit a trader from selling an article for more than it cost may become disadvantageous to society as a whole. Take a concrete case, which was frequently occurring in mediæval communities. There is a scarcity of wheat and a deficiency in the bread supply. Those who have the wheat or the bread to sell are anxious to put the price up. They are not allowed to do it. The Church threatens them with everlasting penalties in the next world; and, more immediate if not more important, the magistrates threaten to cut off their ears in this. Of course the price stays where it was. No man is going to imperil his soul's salvation and his ears at the same time. The consequence is that as long as the supply lasts the consumption of bread goes on at the same rate as before. Then there is a sudden and appalling famine in which whole villages

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are desolated. Contrast the working of the modern principle, of letting people charge whatever they can get. Those who own the food supplies raise their prices as soon as they see the scarcity threatening. This enhancement of price causes people to be more economical in the use of bread, so that the old supply lasts longer. It also gives people a motive to arrange for the importation of wheat from other markets in time to prevent the most acute forms of famine. Of course there is some hardship. The poor feel the increased price of bread acutely; and when they see that this increased price goes to swell the profits of traders who had more money than the consumers to begin with, they are most jealous of the injustice. But the moderate hardship to the consumer when the price of bread begins to rise prevents the awful and appalling loss which he would suffer in seeing his children die before his eyes if all the bread in the community were used up; and the extra profit to the seller is a small price for the public to pay if the seller thereby is stimulated to bring in additional supplies before the acute stage of famine is reached.

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Whatever may be thought of the old legal theory of a just price, the fact remains that almost every attempt to enforce that theory has intensified the evils it was intended to prevent. There are many men still engaged in business who can remember the days in 1864 when Congress undertook to prevent speculators from putting up the price of gold; with the result that the price of gold in two weeks went up to a height hitherto undreamed of, and that as much harm was inflicted on the Union cause as would have resulted from the loss of half a dozen pitched battles. For high prices and abnormal profits in a particular line are not a cause of scarcity. They are a symptom of scarcity; and the man who attempts to treat the disease by repressing the symptom manifests but little knowledge of the organization with which he is dealing.

It is to the credit of the English judges that they saw this truth. They worked out the true way to deal with the evils of high prices. Not by declaiming against the profits of trade as unjust, but by encouraging more traders to come in and cut down those profits, was society to be supplied with what it needed at reasonable

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rates. Where no such increase of supply or outside competition could be hoped for, then the courts would step in and fix a just price. More than two hundred years ago Lord Hale, in his treatise *De Portibus Maris*, laid down the true economic principle of rate regulation, as understood by the English courts. His position was in substance this. Where one man or one company has the sole right of wharfage or cranage in a town, then the law will tell what he may justly or unjustly charge; and where for any other reason there may be but one wharf or one crane available for the people of the town, the same reason for regulation will hold good. But where other wharves can be built or other cranes set up, this fact provides a more efficient means of control than any law possibly could. Is there scarcity of wharf accomodations? Make it profitable for a competitor to supply such accommodations, and you have the surest guarantee that the deficiency will be made good. Does the owner of a wharf try to make extortionate profits? The quicker will those profits be cut down by some one else on account of his shortsightedness. If you fix an arbitrary price, there may

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be a permanent scarcity, where some of those who most want a thing will not get it at all. If you let the price fix itself, the men who want it most get the thing for the moment, while the producers who charge unfair profits soon find the price reduced to the level of cost of production by the competition of others who enter the same line of business.

This is the common law doctrine of competition. It is usually identified with the name of Adam Smith. Adam Smith did great service in describing its effects upon the wealth of the nation as a whole. But the doctrine had gradually grown up under the sure touch of great jurists before Adam Smith was ever heard of. He did but codify the theory of value which they had created.

The results of applying Adam Smith's theory of trade were so much better than those which had followed from the mediæval theory that the practical men of the nineteenth century accepted his views quite unreservedly. Instead of saying that a just price was one which conformed to the cost of production, they said that a just price was one which was obtained under

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fair competition in an open market. The competition of producers prevented it from getting too high; the competition of consumers prevented it from getting too low. The net result was a price that better met the necessities of society than any other; and the trader, as long as his actions were fair and above board, did a public service by producing this competitive market price which fully warranted him in pocketing any profits he could get. In the eyes of those who held this view, any price which could be thus obtained, without fraud or concealment, was of itself and in itself a just price. It became a principle of the nineteenth-century trade ethics that producers, traders, and consumers, in trying to serve themselves intelligently and openly, served society also; or, in the words of General Walker, that in securing the best market for himself a man provided the best market for others. And the adoption of this ethical principle has had a bearing and a result quite outside of the limits of trade. A great many people to-day hold that under our present system of government and with our present standard of intelligence, a man who in any field of human activity serves himself in an

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open and straightforward manner is thereby serving others; that enlightened selfishness dictates nearly or quite the same course of conduct which would result from enlightened unselfishness; that rational egoism produces as high a standard of general morality as we can expect to get.

During the first half of the nineteenth century, it seemed as if these views were being justified — in trade at any rate, if not in other fields of human activity. During this period many thoughtful people were quite ready to accept competitive ethics as a solution of most of our commercial problems. But as the years have gone on it has become evident that something more is needed. Competition is a good medicine for some diseases; but it certainly falls short of being a panacea for all. As time has gone on the opponents of competition have become more numerous, and are expressing their ideas more loudly and more definitely.

Their first charge is that modern trade, in its successful and brilliant forms, does not represent any real effort to meet public needs. They say that it is for the most part mere speculation. It either ignores public

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wants, in which case it is only gambling; or it antagonizes those wants by efforts to manipulate the market, in which case it is conspiracy to rob the people. Modern trade ethics, they say, is no longer content with asserting a man's right to buy what he wants as cheaply as possible, or sell what he has as dearly as possible; it encourages a man to buy what he does *not* want, or sell what he does *not* possess. Profits from transactions of this kind they consider to be mere robbery.

This view of the matter is partly true and partly false. Every right-minded man must deplore the extent to which speculation is carried at the present day. A very considerable proportion of the transactions, even on the legitimate and recognized exchanges, are of the nature of gambling; and the case is far worse in the illegitimate exchanges, bucket shops, and other institutions of similar character with which the country is cursed. Such transactions, though they nominally take the form of trade, are really a peculiarly dangerous kind of betting, which probably does more harm than betting on horse races or card games. The sums involved are larger. The transactions look so much like

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legitimate investment that many a man who would shrink from the associations of the poker table or the race track goes into speculation more or less unconsciously. Its apparent resemblance to legitimate trade gives him a false sense of security and false confidence in his own judgment. It makes him ready to borrow others' money to extend his operations. It renders him an easier prey to adverse chance or to the wiles of the professionals with whom he is dealing. It gives those professionals every facility to take all sorts of advantage of their inside information, at the expense of an ignorant public; and it encourages the less scrupulous element among them to circulate false statements concerning the value of the goods in which they deal, or to form conspiracies intended to influence that value, to the detriment not only of the misguided gamblers, but of the legitimate interests of trade.

If all speculation were of this character, it would be easy to condemn and stop it. But side by side with this wrong side of speculation, which does much harm and no good, there is a right kind of speculation which seems to be an absolute necessity for the successful and regular

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conduct of modern industrial life. Much of the business of our larger exchanges is of this sort; and there is a still greater volume of these legitimate and necessary speculative transactions which do not get recorded in any exchange at all. Without this speculation, recorded or unrecorded, it would be impossible for the manufacturer and merchant to do their work successfully on the scale at which it is done to-day.

It is impossible to distinguish the two kinds of speculation, the right and wrong type, by the form of transaction. Some people think that when a man sells what he has not got, it must necessarily be an objectionable sort of business. Yet nine-tenths of the transactions of many of our best cotton brokers are sales of cotton which they do not have, and which may not even be in existence anywhere. It is a necessity for the cotton manufacturer and his operatives to be able to run the mills as regularly as possible throughout the year. The farther ahead a manufacturer can take orders, the better it is for him and for his employees. He cannot attempt to store all the cotton which he wants for these future orders without sacrifice of interest and danger

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of fire. Large storage of unused goods represents a loss, not only to his own purse, but to the resources of the community. On the other hand, he cannot afford to make a price for his future product — a necessary basis for any such orders — when he does not know what the cotton will cost him. What does he do? He goes to a broker — a man who has familiarized himself with the acreage of cotton, the amount of supplies left over from the last season, and who, as time goes on, notes every change in weather which is liable to affect the supply of the new crop, and every shift of public demand which will increase or lessen the amount at his disposal. Acting on the basis of his expert knowledge, the broker can forecast the prices of cotton for future delivery. He can leave the manufacturer free to make the calculations concerning the parts of his business in which he is well informed without loading himself with risks and burdens in a large department in which he is and must be very imperfectly informed. Of course, a cotton broker often makes mistakes and loses money; but his mistakes are not so serious as those which the manufacturer would make. He earns his profits. He creates

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in the long run a better demand for the farmer's cotton than would otherwise be the case, and a better adaptation of acreage and agricultural wages to future needs than would be possible under any other system.

What happens in the cotton business is paralleled in every other line of industry. If I am building a house, I want to know what it will cost; and this I can know only when the dealers in timber and iron and lime are willing to make sales of these commodities for future delivery beyond the amount of those which they have stored in their warehouses or can afford to have. It is the power to forecast future supplies and demands which makes a modern trader render his best service to society. In old days, before the railroad and the telegraph were invented, large profits were secured and large public services rendered by putting goods on the market in the place where they were needed. The man who shipped wheat promptly from a spot where it was abundant to one where it was scarce prevented a famine, and reaped a rich but well-deserved reward for so doing. To-day the possibility of famine is minimized by the telegraph and the steamship. Word goes

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from one market to another in a moment. A consignment comes back in a day. There is neither the opportunity nor the need for exceptional skill in sending these telegrams and making these transfers. Our trouble now is, not in having goods at the right *place*, but in having them at the right *time*, — in withdrawing them from the market when they are not needed, in order to place them at the disposal of that or some other market when they are needed. No telegraph can forecast the future. No steamship can transfer to the hereafter goods which are being wasted in the present. It is the much-abused speculator who, by buying what he does not want in the expectation of having it available when it is wanted, or by selling supplies which he does not control in the well-founded belief that he is going to be able to get them, keeps us from those wild fluctuations of trade and grave crises in business whose evils form the counterpart in the twentieth century to the evils of famine in ancient days. We cannot distinguish the right and wrong uses of speculation, either in our statutes or in our moral judgments, according to the form of the transaction. We must go deeper, in order

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to see whether a man is presumably meeting an actual want of the public or simply satisfying the craving of his own instinct for gambling.

The first essential in right speculation is that a man must be really able to make good his guarantees as to the future. In other words, he must be risking his own money. If he is making contracts for future delivery on the basis of other people's money, — whether through actual borrowings or through inflated credit, — this means that the profits, if there are profits, will go to him, and the losses, if there are losses, will fall on somebody else. This is not trade; it is gambling with loaded dice. If we can insist that the man shall have capital to make good his guarantees, we shall pave the way for a process of natural selection by which the skilful man, who can meet the needs of the public, will come to the front; while the unskilful man, from the very fact that he loses his own money, will retire from the business as unprofitable.

There are already many lines of industry and commerce in which large commission houses and brokerage firms have grown up, whose business meets this test

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to the fullest degree; houses with adequate capital, whose profit represents the profit due to accumulated experience. This is clearly the right and serviceable sort of speculation. In such industries the firms that practise this kind of speculation are honored; while the gamblers whose transactions are similar in form, but different in intelligence and solidity of purpose, are discredited. It only remains to extend this differentiation over a wider field — to assign the proper meed of honor to the moderate fortunes that have been made by forecasting public needs in produce and securities, and the proper meed of dishonor to those larger and more dazzling winnings which have been made by borrowing the necessary capital to execute some *coup* which conduces more to a man's fortune than to his reputation for honorable dealing. It is because the public judges transactions by their form rather than by their underlying relation to the needs of the market that reputable houses in any line of business allow their names to be connected with transactions of this kind; and it is because reputable houses thus lend their names to them that disreputable ones can profit

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by the weakness and ignorance of their customers. It is the fundamental purpose of the transaction, not its outward form, that makes it good or bad; that determines whether the speculator is performing for the public the service of ensuring it against fluctuations in supply, or is taking advantage of the public desire to get rich quickly and pandering to its worst commercial appetites.

There is another set of objections urged against competition and the system of trade ethics based upon it. Competition, in the opinion of many, is but another name for the struggle for existence. To make this a basis of ethics is a mere glorification of force;—

“The good old rule, the simple plan  
That they should take who have the power  
And they should keep who can.”

It may indeed work a sort of rough justice where the two parties to a transaction are on equal terms. When buyer and seller both have money, the market price may be fair to both; but when a capitalist who has money buys labor from a man who has none, the result cannot possibly be fair to the latter. The capitalist

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can wait. The laborer must work on the capitalist's terms, or starve. Under these circumstances the opponents of competition say that the modern competitive system necessarily involves a gradual accumulation of capital in the hands of the moneyed class. It may produce satisfactory results for the consumers; but they hold that, as between different classes of producers, its effects are in the highest degree unsatisfactory and unjust. They are willing to credit competition with the improved business methods and improved industrial efficiency of modern times; but they think that these are purchased at the expense of the very lifeblood of the people. They hold that with society constituted as it is, the fierce struggle for existence between different workmen has produced so much evil to the laborers that it balances or outweighs the good which it has accomplished in other directions; and that any man who looks with complacency on the ethics of the modern competitive system must shut his eyes to this enormous and widespread wrong.

The relative amount of good and evil existing under the competitive system is obviously a question of fact.

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For my own part, I hold that the good greatly outweighs the evil. It seems to me undeniable that all through the nineteenth century the workmen as a class have been making great progress; and that the general standard of a workman's wages in each successive generation enables him to buy more things and better things than his father did. During my work as a labor commissioner and as a journalist, I was repeatedly impressed by the fact that the worst cases of destitution, whether in city or country, were where practices that were typical in the eighteenth century had survived in the nineteenth. The abuses of child labor which are laid to the account of modern competition appear to have existed in worse form before the factory system was ever thought of. The little children were worked like slaves in their homes from morning till night. It was when these abuses came out into the light that they began to be stopped. The sweating system, the tenement-house cigar system, and the other parts of our industrial system which shock us most, are remnants of the old methods, not characteristics of the new ones. The modern system has evils enough of its

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own to answer for; but not, I think, these particular ones with which it is perhaps most frequently charged.

During the period to which I refer my attention was called to one phase of the competitive system which seems particularly dangerous. I refer to those cases where unlettered immigrants with a low standard of living take the bread out of the mouths of men of higher grade, intellectually and morally, who require a correspondingly higher standard of living to sustain them. Yet even in this extreme case I am convinced that the competition produces a net balance of economic advantage; that when you say to the laborer who has previously occupied the ground, "Rise or die," the number of people who are able to take advantage of being relieved from the drudgery of the lowest grade of labor to rise is indefinitely greater than the number of those who, being unable to accept the new conditions, are crowded out of the means of self-support. Far be it from me to say one word which might seem to argue indifference to the hardship of those who could not rise; and yet the system as a whole must be judged by its effect on the large number who are benefited, often

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in spite of themselves, rather than on the comparatively small number who would not or could not enjoy its benefits. The Irishman of 1830 forced the American up, and not out. The Italian of 1880 forced the Irishman up, and not out. The Italian, in turn, if he remain here for permanent citizenship, is being forced up to an eminence of which his ancestors never dreamed by the successive crowds of immigrants from countries farther east. There are objections, and serious ones, to unrestricted immigration; but they are connected with the difficulty of assimilating as members of our body politic people whose traditions of civil liberty and moral responsibility are different from our own, and whose language forms a barrier against their rapid reception of our ideals, rather than with any evil economic effect which these men are likely to have upon the production and distribution of the wealth of this country.

We are told that competition between labor and capital is essentially and necessarily unfair. This charge sounds plausible enough; but it really rests upon a misconception of the nature of competition. There is

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no competition between labor and capital. There is competition between capitalists for the services of the laborers, and between laborers for the opportunity to work for the capitalist. It may well be that the struggle on the one side is sometimes more intense than on the other. It may happen that there are so many workmen in a given place that they will push wages down to the starvation point, or that there is so much capital in a certain place that it will push profits down to zero. But the important thing to notice is that where competition exists at all, the abundance of the capital forms a source of strength to the laborer rather than of weakness, because it means that there is more opportunity for his efficient labor and more people who can afford to pay a good price for his services. If all the capital in a given line is monopolized under a given organization, the laborer may not get the benefit of this state of things. But there have been very few industries in the world where all the opportunities for work or nearly all of them have been thus monopolized. Until that time the competitive system makes every increase in the amount and efficiency of capital a means of gain to

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the laborer instead of loss; and the trades-unionist who attempts to accelerate this process of organization of capital by insistence on the system of collective bargaining, has been transferring the industrial conflict from a field where the strength of different capitalists helps the laborer, because the capitalists are pitted against one another in bidding for his services, to one where their strength hurts him because it enables them to endure longer than he can. Admitting the beneficent effects of trades-unions in some cases, and the serious provocation given by capitalists and their agents to the formation of such unions in other cases, we must not shut our eyes to the fact that in America, during all that part of the nineteenth century where the labor market was actively competitive, the results to the workmen in wages, comfort, and progress were decidedly better than in England, where organized labor dealt with organized capital.

For competition is a very much more beneficent thing than its critics are willing to admit; and the deeper we look into its real workings, the more we see the folly of the attempts to do without it. Competition

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is a totally different thing from the Darwinian struggle for existence. Competitive ethics is not a mere glorification of force. It has a moral element which its opponents overlook. It is a fight for existence organized in such a way that the outside world is benefited by it, instead of being injured by it. When two snakes or two tigers are struggling as to which shall get the same bird, the probability of an advantageous outcome for the bird is very slight. When two bosses are struggling as to which shall get the same workman, the probability of an advantageous outcome for the workman is very large. From the standpoint of the parties who compete with one another there is in each instance a contest; but from the standpoint of the other party the intensity of the contest means an injury in one case and a benefit in the other. The more snakes there are, the worse for the bird; but the more bosses there are, the better for the workman. Competition is what its name implies — a simultaneous *petition* or offering of services under which the man who offers the best service is chosen. It is an attempt to base survival on ethical efficiency rather than on physical efficiency.

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Not its acceptance of the ethics of competition, but its attempt to apply those ethics to cases where competition does not exist, forms the basis of the really serious charges which the moralist can bring against the modern business world. What some of these cases are and what ought to be done with them, will be considered in the next lecture.

To sum up. A just price, according to the traditional and generally accepted view, is one which conforms as closely as possible to the cost of producing the commodity; and of that cost labor is the largest element. But a law or a public sentiment which compelled the trader to base his price on cost, and condemned as unjust all exceptional profits, was found to defeat its own end. It was better in time of scarcity to allow the temporary high prices to serve as a stimulus for increased supply. Even if that increased supply was brought about by the skill of speculators, it was well to leave speculators their profit, as long as they really undertook to meet the need and prevent the scarcity. We are justified in approving as on the whole beneficent the theory that the best price for society is that which is

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made under open competition of buyer with buyer on the one hand, of seller with seller on the other hand; and that where competition really exists the ethics of modern trade are sound.



## **CHAPTER III**

### **ETHICS OF CORPORATE MANAGEMENT**



## CHAPTER III

### ETHICS OF CORPORATE MANAGEMENT

WHEN I go to a responsible store to make a purchase, I have every reason to believe that the price charged will be a fair one. I may not like the goods; I may not feel that I can afford the price; but if I like the goods and can afford the price, I assume that I am not being cheated. The competition of different establishments makes the general scale of charges just; and public sentiment in favor of a one-price system assures me that I shall have the benefit of this general scale of charges in my own particular case.

If I go to a bank to borrow money on good security, I have the same feeling. The competition of responsible borrowers on the one hand, and responsible lenders on the other, makes a fair interest rate at which the number of those who can give good security for the management of other people's capital absorbs the offer-

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ings of those who are willing to lend their money. Or, if I try to sell my services in any of the recognized lines of industry, I have confidence that both the self-interest and self-respect of the man with whom I am dealing will lead him to offer me a fair market rate, and that the scale of wages or fees thus created will be more advantageous on the whole than anything which could be devised by law.

Of course there are numerous exceptions. The man or woman who hires a cab is by no means certain that the self-respect of the cabman will lead him to believe in a one-price system; and while the competition of different cabs with one another may make a fair enough average rate of compensation, there is great probability that extortion will be practised in individual instances. Therefore the law steps in to regulate the price of cabs. The man or woman who has occasion to borrow of a pawnbroker has no assurance that the pawnbroker will believe in a one-price system or give the benefit of a market rate of interest. Hence there is a good deal of well-founded demand for usury laws. The only reason why we do not have them is because the

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advocates of such laws generally object to interest in itself, rather than to extortionate variations from market rates of interest.

But the most important cases of departure from the one-price system, and of apparent need of some further protection than is given by competition, do not come in connection with cabs or pawnbrokers or other minor industries of any kind. They come in connection with the dealings of large corporations which obtain a monopoly of the market for some line of goods or services.

In his charmingly practical book on *Politics*, Aristotle tells two stories which are of perennial interest to the student of industrial combination. In the first of these he relates how Thales of Miletus was a great philosopher, but was reproached by his neighbors because he was not as rich as they were. By his acquaintance with astronomy, Thales foresaw that there would be large crops of olives; and he purchased all the olive presses of Miletus, depositing a very small sum in each case so as to make the transaction complete. When the olives were ripe, behold! there was no one but Thales to rent men the presses whereby they

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might make their oil; and Thales, who was thus able to charge what price he pleased, realized an enormous sum. He did this, says Aristotle, not because he cared for the money, but to show his neighbors that a philosopher can be richer than anybody else if he wants to, and if he is not, it simply proves that he has more worthy objects of contemplation.

There was a man in Syracuse, Aristotle goes on to say, in the days of Dionysius the Tyrant, who bought all the iron in Sicily on so narrow a margin that without raising the price very much he was able to make twice the amount of his total investment in a short time. When Dionysius the Tyrant heard of this, he was pleased with the ingenuity of the man; and he told him that he might keep his money, but that he had better leave Syracuse.

These stories show plainly enough that monopolies are no new thing; that more than two thousand years ago there was a Standard Oil Company of Asia Minor and a United States Steel Corporation of Sicily; and that the President of the United States is by no means the first monarch who has addressed himself somewhat aggressively to the problem of trust regulation. But

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in ancient times these monopolies of producers or merchants were an exception; now they are becoming the general rule.

The development of the power-loom and the spinning-machine in the middle of the eighteenth century, followed shortly by that of the steam-engine, substituted a system of centralized industry, where a number of people work together, for the scattered industry of the older times, where people worked separately. The invention of the steamship and the railroad enabled the large factories of modern times to send their goods all over the world, and allowed the establishments to increase in size as long as any economy in production was to be gained by such an increase. The capital required for these large industries was far beyond the power of any one man or any small group of partners to furnish.

The modern industrial corporation, with free transfer of stock, limited liability of the shareholders, and representative government through a board of directors, was developed as a means of meeting this need for capital. Men who could take no direct part in the management of an industrial enterprise, and whose

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capital was only a very small fraction of what was needed for the purpose, could, under the system of limited liability, safely associate themselves with a hundred or a thousand others to take the chance of profit which concentration of capital afforded.

These industrial units soon became so large that a single one of them was able to supply the whole market. Competition was done away with, and monopoly took its place. This effect was first felt in the case of railroad transportation. You could not generally have the choice between two independent lines of railroad, because business which would furnish a profit to one line was generally quite inadequate to support a second. Nor could you hope for the competition of different owners of locomotives and cars on the same line of track, because of the opportunities for accident and loss to which such a system was exposed. In England, indeed, they were impressed with the analogy of a railroad to a turnpike or canal, and for nearly half a century after the establishment of railroads they made all their laws on the supposition that cars and locomotives would be owned by different people. But the failure

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of these laws, when so persistently enacted and backed by a conservatism of feeling so strong as that of the English nation, is the best proof of the impracticability of the scheme. By 1850 it became pretty clear that most railroads had a monopoly of their local business. By 1870 the consequences of this monopoly had become quite clearly apparent.

These consequences were in some respects good and in some respects bad. The railroad managers were quick to introduce improvements and to effect economy of organization. These improvements allowed them to make rates very low on long-distance business in general, and particularly on business which came into competition with other railroads or with water-routes. But the extreme lowness of these through rates only emphasized the glaring inequality between the treatment of the through or competitive business, and the local business of which the railroad had a monopoly. On the old turnpike the cost of transportation had been high, but the shipper could rely upon the price as fair. There was always enough competition between different carriers to prevent them from making extortionate

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profits on any one shipment. On the railroad which took the place of the turnpike the cost of transportation was very much lower, but there was no assurance whatever of fairness. The local rates were sometimes kept two or three times as high as the through ones; and the shipper had to see car loads of freight hauled to market past his house from more distant points at twenty-five dollars a car load, when he himself was paying fifty dollars a car load for but a part of the same haulage. Nor was this the worst. Arbitrary differences between places were bad enough; but there was a similar discrimination between different persons in the same place. The local freight agent was a sort of almoner of the corporation. The man who gained his ear, whether by honest means or not, got a low rate. The man who failed to get the ear of the freight agent had to pay a much higher rate for the same service.

In this country things were at their worst in the years immediately following the Civil War. While we had a one-price system in the trade of the country, both wholesale and retail, and in its banking, and to a large degree in its labor market, the whole system of Ameri-

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can railroad rates was run on principles which a decently conducted store would have scorned to admit into its management. Our industrial methods had changed too fast for our ethics to keep pace with them. In the old-fashioned lines of business people were allowed to charge what prices they pleased, because competition kept their power of making mistakes within narrow limits. In the local railroad freight business competition was done away with, and the managers did not see the necessity of substituting any other legal or moral restraint in its stead. In fact, they asserted a constitutional right to be free of all other legal or moral restraints. They regarded the liberty to serve the public in their own way, which had been allowed them under the competitive system, as carrying with it a right to hurt the public in their own way when the protection of competition was done away with. Instead of seeing that the constitutional rights for the protection of property had grown up because property was wisely used, they asserted that it was none of the public's business how they used the property, as long as they kept within the letter of the Constitution.

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Of course this arbitrary exercise of power provoked a reaction. The state legislatures of the Mississippi Valley passed the various Granger laws which were placed on their statute books from 1870 to 1875. These laws represented an attempt to reduce rates as unintelligent and crude as had been the attempts of the railroad agents to maintain rates. In the conflict of constitutional authority, the courts on the whole took the side of the legislatures more than they did that of the railroads; and the ill-judged laws regulating railroad charges, which could not be repealed until several years too late, were an important factor in increasing the commercial distress that followed the crisis of 1873.

Just when things were at their worst a really great man appeared on the scene of action in Charles Francis Adams of the Massachusetts Railroad Commission. He promulgated an idea, essentially ethical in its character, which not only was of great service at the time, but has been the really vital force in all good schemes of corporate regulation ever since. It is hardly too much to say that all our plans for dealing with corporate monopoly have been successful according to the extent

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to which they conformed to Mr. Adams's idea, and that their ill success in various cases has been the result of their departure from it. Mr. Adams's central principle was this. In the management of a railroad the temporary interests of the road and of its various shippers are often divergent; but the permanent interests of the railroad and of the various shippers come very much closer together than the temporary ones, and can almost be said to coincide. A railroad which is managed to make the most profit for the moment will try to make very low rates on through business that might otherwise go to another line, and will squeeze to the utmost the local shippers who have no such refuge. But if a manager looks five years or ten years ahead, he will see that such a policy kills the local business, which after all must furnish the road's best custom, and stimulates a kind of competitive business which can and will go somewhere else when the slightest opportunity is given. The manager who looks to the future, therefore, instead of to the present, will put the local business on the same level as the through business; and if he makes any difference at all in the charge, it will be due

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to a slightly superior economy of handling large and regular consignments for long distances, as compared with the small and irregular consignments of intermediate points. The agent who simply wants to get the most money that he can for the moment will see an apparent advantage in making a special bargain with each customer. The agent who takes a long look ahead will do just what the storekeeper does who takes a long look ahead. He will see that the right customer to develop is the self-respecting man who is content with the same treatment as other customers; who is too proud for begging and too honest for bribery.

I cannot go into all the details of the application of this theory. Suffice it to say that during the comparatively short time when he was at the head of the Massachusetts Commission, Mr. Adams did, in fact, persuade the railroad men of his state, and of a great many other states, to take this view of the matter; that by his recommendation, made without any authority except the authority of common sense, he permanently removed more abuses in railroad management than all the various state statutes put together; and that the

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judicial decisions of the years from 1875 to 1885, when Mr. Adams's influence was dominant, show a constantly increased understanding, not only of the principles of railroad economy, but of the principles which make for the permanent public welfare of shippers and investors alike.

I have spoken of Mr. Adams's influence as an ethical one. The Railroad Commission of Massachusetts, under the original bill which established it, had practically no powers except the power to report. It was for this reason regarded by many as likely to be a totally ineffective body. This absence of specific powers was just what Mr. Adams welcomed. It threw the Commission back on the power of common sense — which does not seem as strong as statutory rights to prosecute people and put them in prison, but which, in the hands of a man who really possesses it, is actually very much stronger. And when commissions of more recent years, disregarding the experience of Mr. Adams, have besought over and over again for an increase of their power to make rates, and their power to prosecute offenders, and their power to keep the courts from

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reviewing their acts, I am reminded of the minister in the country church, who said, "O Lord, we pray for power; O Lord, we pray for power;" until an old deacon, unable to contain himself, interrupted, "'Taint power you lack, young man; it's idees!"

In a complex matter like this we are governed by public opinion. Anything that makes it necessary for a man to get public opinion behind a measure of administration or regulation prevents him from trying unsound experiments, and assures him that the things that he carries through will be successful in fact and not merely in name. Good sense is needed to create acquiescence on the part of the courts, and to prevent widespread evasion of statutes and ordinances by the business men of the community as a body. Any measure which seems to dispense with the necessity of its exercise is pretty sure to end in disaster.

I have gone into the detail of Mr. Adams's work for the sake of this ethical lesson which it inculcates. We have passed beyond the conditions of Mr. Adams's time. National regulation has taken the place of state regulation of railroads. Other forms of corporate

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activity have organized into monopolies perhaps more widespread and powerful than any railroad monopoly ever was. The relations of corporations to their employees, and the mutual duties of organizations of capital and labor toward the public in making continuous public service possible, have become vastly more complex than they were thirty years ago. But the essential fact still remains that the problem can be settled only by the exercise of common sense and a certain amount of unselfishness. Any law which seeks to render these qualities unnecessary or superfluous is foredoomed to failure. Any citizen who lets these qualities fall into abeyance falls short of a proper conception of public duty. The larger his position of influence in the industrial world, the greater is the responsibility upon him to bring these qualities into use in the conduct of corporate business.

The president of a large corporation is in a place of public trust. In an obvious sense he is a trustee for the stockholders and creditors of his corporation. In a less obvious but equally important sense he is a trustee on behalf of the public.

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In regard to the first of these points, the community has made substantial and gratifying progress toward proper moral standards and their enforcement. It will perhaps create surprise that I say this so unreservedly, when we have the results of the insurance scandals freshly in mind. But bad as these things were, they were not nearly so bad as many things that happened a generation earlier; and when the insurance scandals became known, they created an outburst of public feeling of a very different kind from anything which would have developed forty years ago. The spontaneous and overwhelming character of this outburst shows a great moral advance. In the year 1870 it was the commonest thing in the world for the president of a large corporation to use his position as a means of enriching himself and his friends at the expense of the stockholders in general; and it might almost be added that it was the rarest thing in the world for anybody to object. The fact that Cornelius Vanderbilt admitted his stockholders to the benefit of profitable "deals," instead of taking the whole for himself and his friends, was a sufficient departure from the usage of the time to excite

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universal remark. The worst things which were done in our insurance companies represent a pious regard for the law and a scrupulous observance of the principles of morality, as compared with some of the transactions in Erie in the early seventies. Ten years later things had improved. It was no longer considered proper for a president to wreck his company in order to enrich himself. Yet even in this decade it was held that minorities of stockholders had no rights which majorities were bound to respect; and while the public did not justify the president in getting rich at the expense of his stockholders, it saw no harm if he used his inside information to get rich at the expense of anybody and everybody else. It is greatly to the credit of some of our best railroad men that in the last decade of the nineteenth century we rose above this state of things. The example of a recent president of the Lake Shore Railroad, who died a relatively poor man when the stock of his corporation stood higher than that of almost any other railroad in the country, is a thing which deserves to be remembered — and which has been.

Banks and railroads were the two lines of business

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where corporate scandals first developed on a large scale. They are now the two lines of business where standards of corporate honor, beyond what the law could enforce, have become pretty well established. This is no mere coincidence. Corporate powers gave opportunities for abuse which did not exist before. Where these powers were greatest, these abuses developed first and made the earliest public scandals. It was here that the business men themselves felt the need of remedies deeper reaching than those which the law could give. Combinations of merchants or manufacturers or of financiers outside the regular lines of banking were a later thing, and therefore we are only at this moment correcting the evils which are incident to their conduct.

It takes a long time for a man to learn to transfer a principle of morality which he fully recognizes in one field to another field of slightly different location and character, particularly if the application of strict morality in the new field is going to hurt his personal interest. I remember a story of a country court in a warranty case which furnishes an instance in point. One man

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had sold another a cow, and had represented that cow as possessing certain good qualities — adding, however, that he did not warrant her. The cow proved not to possess the qualities alleged, and the buyer sought to recover the purchase-money. As there was no dispute about the facts, the plaintiff's attorney thought that he had an easy case; for it is a well-established principle of law that a disclaimer of warranty in such a sale does not protect the transaction from the taint of fraud, if the matters in question were ones which the seller really could know and the buyer could not. He showed a sufficient number of legal precedents to illustrate this principle, but was somewhat dumbfounded when the opposing lawyer rose and said: "May it please the court, every one of the cases cited by my learned brother is a horse case. I defy him to produce one relating to horned cattle." The court was impressed with this fact, and instructed the jury to the effect that it had been established from time immemorial that a disclaimer of warranty was invalid with regard to a horse, but that the case of a cow was something totally different. We witnessed a somewhat similar condi-

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tion in recent years, when men who would have recognized that it was wrong to get rich at the expense of a stockholder, who had clear and definite rights to dividends that were earned, were perfectly willing to use all kinds of means to enrich themselves at the expense of the policy holders, whose rights were vague and indefinite. The lesson of last year was a terrible one; but I believe that it has been thoroughly learned. The business community of to-day recognizes that the president and directors of a corporation have a fiduciary relation both to their stockholders and to their creditors; that any man who disregards this relation is guilty of breach of trust, just as much as he would be if he used his position as guardian of an orphan to enrich himself at the expense of his ward. If any man does not see this, the business community despises his intellect. If he does see this and acts in disregard of it, the business community despises his character.

Unfortunately the obligation of the managers of our corporations to the public is not yet as clearly recognized as their obligation to the stockholders. Some of those who are most scrupulous about doing all that

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they can for the stockholders make this an excuse for doing as little as they can for the public in general, and disclaim indignantly the existence of any wider trust or any outside duty which should interfere with the performance of their primary trust to the last penny. There is many a man who in the conduct of his own life, and even of his own personal business, is scrupulously regardful of public opinion, but who, as the president of a corporation, disregards that opinion rather ostentatiously. Personally he is sensitive to public condemnation; but as a trustee he honestly believes that he has no right to indulge any such sensitiveness. He is unselfish in the one case, and selfish in the other. I believe that this results from an extremely shortsighted view of the matter; and that the conscientious fulfilment of wider obligations, which he assumes as a matter of course when his own money is at stake, is at once wise policy and sound morality when he is acting as trustee for the money and interests of others.

Even from the narrowest standpoint of pecuniary interest, the duty of the corporate president to the

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investors demands that he should by his life and his language strive to diminish the danger of legal spoliation which threatens property rights in general and the rights of corporate property in particular. This obligation is partly recognized, and partly not. Our leaders of industry, as a rule, do not spend great sums on ostentatious luxury, and do spend great sums on objects of public benefit. Both of these facts are invaluable conservative forces. On the other hand, too many of them insist publicly on an extreme view of their legal rights and claims, which cannot help irritating their opponents, and which does a great deal more harm to the interests of property than most people think. It was the arrogance of the freight agents, quite as much as the mistakes in their schedule of charges, that precipitated the Granger agitation. They defiantly refused to recognize the shipper's point of view. Every such defiance by the head of a large corporation makes more converts to radicalism and socialism than the speaker ever dreams. If a man intends to stand on his legal rights, it is generally wise for him to keep as quiet as the circumstances admit. The cases are few

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and far between where a loud statement in advance that he is going to stand on his legal rights, and that those rights in his judgment are consonant with the laws of God, produces anything but an adverse effect on his interests and on the interests of those whom he represents. It is not for the profit of the year's balance-sheet that the corporate president should regard himself as responsible, but for the profit in the long run; and that profit in the long run is identified with the maintenance of a conservative spirit and the avoidance of unnecessary conflicts between those who have and those who have not.

The duty of the corporate president to the investors also demands that he use all wise means for the maintenance of continuous public service. The more complete the monopoly which he has, and the more vital the public necessity which he provides, the greater is the importance of this aspect of his trust for the permanence of the interests which he represents. For if the employer is indifferent to the public need in this regard, the employees will be still more indifferent. If he tries to make public necessity a means to reënforce

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his demands, they will make that public necessity a means to reënforce their demands; and in this contest the employees will have every advantage on their side. Each conflict of this kind will increase the demand for public regulation of corporate affairs, even if the interests of the investors suffer thereby; and it may reach a point where many lines of business will be taken out of the hands of private corporations and into the hands of the government.

In the old days, when the public was served by a number of independent establishments, a strike was a grave matter for the establishment where it existed and a comparatively small thing for anybody else. The public got its goods from some other quarter. The slight shortage in the supply might raise the prices a little, but it did not produce a famine. The community as a whole could wait complacently for the fight to be settled. If, however, the company has a monopoly, the conditions are reversed. The strike, if protracted, causes great inconvenience and generally considerable suffering to the public, while the effect on the finances of the corporation is often comparatively slight. Indeed,

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It has become a proverb that strikes are not as a rule good reasons for sale of the securities of the companies affected. I am afraid that this fact makes the presidents of our corporations, especially those who hold a narrow view of their duties, more careless than they otherwise would be about men whom they choose for positions of superintendence, and about the policy which they adopt in early stages of labor disputes. But it is upon care in these particulars, rather than upon any machinery for compulsory arbitration, that we must rely for the prevention of strikes. I suppose that sometime we shall devise systems of arbitration which will avoid a large number of our industrial quarrels; but those that I have actually seen in operation do not appear very promising. We are told that compulsory arbitration has been made to work in New Zealand; but some of the official information which we get from New Zealand has been so totally discredited that we must be a little cautious about accepting any of the testimony which is transmitted to us. Nor do I believe very greatly in the efficiency of profit-sharing systems as a general means of preventing labor troubles. Some-

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times they work well; oftener they do not. Plans for attaching the laborers to the corporate service by pension funds, by the distribution of stock, and other means of this kind, are perhaps rather more promising. Yet even these are limited in their applicability, and sometimes cause more unrest than they prevent.

For the present, it is not to any machinery that we must look for the solution of these difficulties. It is to a wider sense of responsibility on the part of directors and general officers. The man who selects his subordinates solely for their fitness in making the results of the year's accounts look best, and instructs them to work for these results at the sacrifice of all other interests, encourages the employees to work for themselves in defiance of the needs either of the corporation or of the public, and does more than almost any professional agitator to foster the spirit which makes labor organizations unreasonable in their demands and defiant in their attitude. For the laborers, like some of the rest of us, are a good deal more affected by feeling than by reason; a good deal more influenced by examples than by syllogisms.

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When I was connected with the *Railroad Gazette*, we had occasion to discuss a strike on the part of one of the best of the labor unions, in which, contrary to the usual practice of that organization, the demands were quite unreasonable. There was something puzzling in the whole situation, which I could not account for. A close observer who, though he was on the side of the corporation, had sense enough to look at the facts dispassionately, said, "Do you know Blank?" naming a man high in the operating department of the road concerned. I said that I did. "Blank," he said, "is an honest man. He is, according to all his lights, an honorable man. And yet if Blank were placed over me, I would strike on any pretext, good or bad, just to show how I hated his ways of doing business. This strike is, of course, an unjustifiable one. For the sake of all concerned it should be stopped as soon as possible, and your paper should say so. But when the strike is over, sail into the road with all your might for employing a man like Blank in a position precisely the opposite of anything for which Providence designed him." It soon became evident that this was a true

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account of the origin of the strike. The company saw the situation and transferred the man, on its own account, to another post for which he was more fitted.

Workmen are accessible to examples of loyalty, as well as examples of selfishness. One of our very large manufacturing concerns in western Pennsylvania a few years ago made a change in its operating head. Not many months after the change I had the opportunity to inquire of a foreman how things were working under the new management. "Sir," was the reply, "there isn't a man in the works but what would go straight through hell with the new boss if he wanted it." I told the "new boss" the story; and all he said was, "I guess they know that I'd do the same for them." That was the voice of a man—an exceptional man; but what he really accomplished represents a kind of result which all of us will do well to keep in view.

In the great railroad strikes of 1877, when the Brotherhood of Locomotive Engineers,—at that time a far less conservatively managed organization than it has since become,—intoxicated with its successes in the South, ordered a general tie-up of New England,

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the men of the New York & New England Railroad met the order with a flat refusal. They had no other reason, and they gave no other reason, than their loyalty to a man who was at that time a superintendent of no particular reputation or influence outside of his own immediate sphere of duty,—Charles P. Clark, who afterward became president of the road. That one man by his personality not only prevented a general strike throughout New England, but by that act restored the balance of industrial force in the United States at a time when it was more seriously threatened than it ever has been before or since.

A few years later, when a strike on the Union Pacific Railroad was scheduled by the Knights of Labor, the president of that road prevented the strike by the simple expedient of so arranging matters that the responsibility for the interruption of public service would at each stage of the proceedings be clearly put upon the labor leaders themselves. If the company had been simply claiming the right to serve itself, they would have claimed an equal right to serve themselves, and might very possibly have had the sympathy of the public

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behind them. But when matters were so arranged in advance that the responsibility for the interruption rested upon their shoulders alone, even the Knights of Labor—and Western Knights of Labor at that—shrank from taking the responsibility of a conflict with the nation. Of course strikes will continue to occur after all precautions are taken. They may come to the man or the company that least deserves it. But we can impress upon the managers of corporations the duty of showing more solicitude for the protection of the public against the disastrous results of the strike when it does come, and the unwise of saying much about the sacredness of the rights of private property under the Constitution at a time when such words can only irritate the employees and alienate the suffering public.

There is, indeed, a sacredness of property right in this country which goes far beyond the letter of the Constitution. The Constitution guarantees that no man shall be deprived of his property without due process of law; that no state shall pass any law impairing the obligation of contract; and that a corporation has the

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right of a person in the sense of being entitled to fair and equal treatment. The conservatism of the American people goes farther than this. It supports a business man in the exercise of his traditional rights, because it believes, on the basis of the experience of centuries, that the exercise of these rights will conduce to the public interests. It puts the large industries of the country in the hands of corporations, even when this results in creating corporate monopoly, because it distrusts the unrestricted extension of government activity, and believes that business is on the whole better handled by commercial agencies than by political ones. But every case of failure to meet public needs somewhat shakes the public in this confidence; and this confidence is not only shaken but destroyed if the manager of a corporation claims immunity from interference as a moral or constitutional right, independent of the public interests involved.

Personally, I am one of those who look with serious distrust on each extension of political activity. I believe that the interstate commerce law did more to prevent wise railroad regulation than any other event

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in the history of the country. I think that the courts would have dealt with our industrial problems better than they have done if the anti-trust act had never been passed. I have gravely doubted the wisdom of some of the more recent measures passed by the national government. But I cannot shut my eyes to the fact that these things are what business men must expect unless business ethics is somewhat modified to meet existing conditions. Industrial corporations grew up into power because they met the needs of the past. To stay in power, they must meet the needs of the present, and arrange their ethics accordingly. If they can do it by their own voluntary development of the sense of trusteeship, that is the simplest and best solution. But if not, one of two things will happen: vastly increased legal regulation, or state ownership of monopolies. Those who fear the effects of increased government activity must prove by their acceptance of ethical duties to the public that they are not blind devotees of an industrial past which has ceased to exist, but are preparing to accept the heavier burdens and obligations which the industrial present carries with it.



## CHAPTER IV

### THE WORKINGS OF OUR POLITICAL MACHINERY





## CHAPTER IV

### THE WORKINGS OF OUR POLITICAL MACHINERY

WHEN a young man starts out in life, he will always find a great many excellent people advising him to go into politics. In order that this advice may be good advice, one important word needs to be added. He should be told to go into politics *intelligently*. Many of the people who give the advice think that the going is the main thing, and that the intelligence will take care of itself. This is a rather widespread mistake. I received not long ago a most charming letter from a lady of a good deal of experience in philanthropic work, in which she said that the great danger under which the country suffered was the disinclination of educated men to take office. I was obliged to answer that I had not as a rule noticed any such disinclination. Educated American citizens, like American citizens of every other class, are as a

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rule quite ready to accept any important public office which their fellow-countrymen may be willing to intrust to their charge. The question is whether they are willing to take the preliminary steps necessary for getting elected. I have grave doubts whether the lady who was so urgent in advising educated men to take office would have been prepared in the majority of cases to recommend the means by which they might most surely obtain it. When a conscientious and honorable man tries to exercise political influence, he usually finds himself face to face with the necessity of some disagreeable compromises. To secure an office which will enable him to accomplish anything, he frequently has to shut his eyes to a number of practices which he knows to be bad; and he sometimes has to place himself in a position where he seems to approve of them by his toleration. Under these circumstances the man who goes into politics indiscriminately, without the exercise of a good deal of judgment, is apt either to abandon it very quickly or to find himself forced into a somewhat different position from that which he intended at the start. "I can get medicine



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into a patient easily enough," said a wise physician; "but heaven knows how to get it out." This argument against the indiscriminate practice of medicine holds equally good, I think, against the indiscriminate practice of politics.

In the earlier lectures we discussed some of the underlying ideas on which the present industrial system is based. I purpose in this lecture to try to do the same thing for our political system; to examine the relation between existing methods of government and the historical conditions which have called them forth; to see what are the practical limitations under which we necessarily act when we go into politics, and what are the practical possibilities for improving the general condition of the country which lie ahead of us.

Our political organization is more complex than our industrial organization, and it is more difficult to make a brief history which shall single out its main lines of development and separate them from the mass of details by which they are surrounded. The chief questions which I want to consider are connected with

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the origin and actual working of representative government in the United States. How far has this system fulfilled the purposes of those who established it? How well does it meet the needs of the country as it stands at present? What unforeseen consequences has it brought in its train? You must pardon me if, in this discussion, I seem to omit many things which appear of importance, and content myself with inadequate proof of some of the propositions advanced. The theme is so vast that we can only deal with its main principles.

Our state constitutions and our national Constitution were chiefly based upon English experience. It is true that the men who framed them had generally read the Greek and Latin classics, and that some of them were familiar with the more recent history of France or of Holland; but their real working experience had been with English law and English traditions. In England from the thirteenth to the eighteenth century they had seen a contest of a king on the one side, striving to get centralized power into his own hands, and a Parliament on the other side, striving to restrict that power

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in the interests of national freedom. This Parliament was what its name implied — a place for *parleys* and discussions, wherein the public opinion of the country could be developed and formulated. Unless the king gave opportunity for such discussion, the people would not pay him the taxes which he needed for carrying out his projects of ambition in foreign lands. By its debates Parliament held up to odium the tyrannical acts of a king which might otherwise have escaped notice, and united public sentiment on a great many matters in which otherwise it would have remained disunited and powerless. All its legislative functions were of comparatively slight importance as compared with this power to educate public opinion, and thus protect the nation against tyranny.

In the government of our colonies and states, and still more clearly in the national Constitution, American publicists tried to reproduce as closely as possible the English Parliament in its functions. They were afraid that a president or governor might strive to become a monarch. They therefore hedged him about with representative assemblies. As England had her

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Lords and her Commons, so the various American legislatures — national, state, and municipal — had their upper and their lower chambers. In one respect only did American legislatures differ widely from that of the mother country. Representation in an English Parliament had been a somewhat haphazard affair. The Lords represented only themselves. The Commons represented but a very small part of the English people. If the discussions in Parliament reflected the popular voices outside, it seemed more a matter of happy accident than of logical necessity. But in America the assemblies were made really representative, instead of nominally so. The districts which chose members of the legislative assembly were made as nearly equal in numbers as the circumstances admitted; and this fact, coupled with the system of universal suffrage, seemed likely to make Congress and the various state legislatures express the popular wishes and popular demands more adequately than the English Parliament had ever done.

But in the course of the first century of our existence two or three developments took place which, without

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changing the form of our Constitution, made a very great change in its practical workings. Chief among these was the invention of better means of communication, particularly the telegraph; and the consequent growth of the newspaper press as a forum of public discussion. At the close of the eighteenth century Parliaments and Congresses had been the places where public opinion was formed. In the middle of the nineteenth this was still partly true. But at the end of the nineteenth it had become practically untrue. Newspapers have appropriated this function of Parliaments and Congresses. Parliamentary debate has not the influence which it had in the days of Madison and Hamilton, or even in the days of Webster and Clay and Calhoun. People no longer send their representatives to Congress to tell what has happened in their districts, and await with eagerness the return of those representatives to know what other people think about it. The telegraph has published the facts months before the legislature convenes. The press has discussed the bearings of those facts in every aspect. Assemblies that were once "deliberative" have ceased

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to be so, because all the deliberation has been done before they meet.

The first body to be affected by this change was the electoral college. The framers of the Constitution expected that citizens of different states would choose electors, and that these electors would meet and discuss who were the best men for president and vice president. But the people soon began to have ideas of their own as to whom they wanted for these offices. They bound their electors by instructions in advance. The members of the electoral college were simply charged with the duty of registering a decision already made, not of contributing to the formation of a new one. A similar change took place in the functions of Congress — more slowly, because it is not so easy to instruct your representative concerning his vote on the different measures which may come up as on his choice of candidates for specified offices — but nevertheless, as the years went on, unmistakably and surely. The people who went to Congress a century ago were sent to inform themselves concerning public needs, with a view of arriving at a common understanding. The people

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who are sent to Congress to-day go under instructions from their representatives, with a view of securing a strong majority for those views, if they can, or a vociferous minority, if that is the best that may be done.

All this has been clearly enough recognized. But one very important fact in connection with it which has not been recognized is a resulting change in the conception as to what congressional legislation really means. The old theory was that Congress should try to arrive by its debates as nearly as possible at a common understanding of what was for the interests of the country. To form public opinion was the first duty; to give effect to that public opinion by statute the incidental one. But the present theory is that Congress should enact whatever a majority of both Houses may desire, without even trying to secure a common understanding. To-day the effort of each legislator is to get a majority in favor of a bill that suits his party or district, and let the rights or wishes of other parties or districts take care of themselves. Statute law, under this changed view, is no longer an expression

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of the public opinion of the whole country. It is an enactment by the representatives of a part of the country of the things which they deem for the interests of their constituents, subject only to the restrictions which will be imposed by the courts.

This change has had far-reaching effects, both on our conception of law and on our methods of government.

The first and obvious effect is that a great deal more statute law is enacted under the new system than was possible under the old. It is far easier to get a majority to agree concerning their interests than to get anything like a consensus of opinion as to what is the interest of the whole people. This increase in quantity of legislation, however, has been accompanied by a loss in efficiency of legislation. There are more statutes, but they are not so well enforced.

Some of them are not enforced at all. When law represents public opinion concerning what is needed for the public, its enforcement takes care of itself. But when law represents what a number of individuals deem to be for their own interest, members of the minority who are hurt by the enactment cannot be

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expected to take very active measures in its support. If such a law too outrageously violates their sense of justice, they will sometimes put obstacles in the way of its enforcement; and when any considerable number of good men treat a statute in this way, its efficiency is at an end. A law can be enforced against the opposition of bad men, because the bad men do not count for much in the support of any law whatever. It cannot be enforced in the face of the active opposition of a considerable number of good men, because the thing that makes law effective is the readiness of good men to support it. A majority of the legislature has an *apparent* power to enact what it pleases, within the very wide limits set by the Constitution; but many a statute passed under such circumstances, though drafted with the utmost care and possessing all the external characteristics of a good law, is destitute of the public backing which is needed to give it vitality.

A five-year-old boy that I heard about came to his mother carrying a dead cat by the tail, and laid it at her feet with the indignant expression, "Mamma, here's a perfectly good cat that I found thrown away

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in the ash barrel." The statute books of our country are full of these perfectly good cats thrown away in the ash barrel — cats which possessed a head and tail and four paws, but which lacked the internal force necessary to give them life.

All this mass of selfish statutes inadequately enforced produces a certain contempt for law and legislation which is bad for the interests of democratic government. But there is another set of results, and perhaps an even worse set, which come about when a law has enough strength behind it to be more or less fully enforced, but has been conceived in such a partisan spirit that its working is resolutely contested by all the technical means which the courts allow.

It will frequently happen that a law designed to meet a public need is so ill drawn that in trying to remedy one injustice it produces another, or that in trying to meet the demands of new conditions it does violence to well-recognized rights created in the past. The courts examine situations of this kind. If the injustice occurs only in a few individual cases, they can give relief to those individuals. If it is widespread,

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they either construe the law out of existence or declare it to be unconstitutional. They exercise an efficient and necessary protection of the rights of the minority. The law as expounded by the courts has certain very considerable advantages over the law as drafted by the legislature. In the first place, judge-made law is the work of experts, instead of that of amateurs. It is the work of men who know by long professional experience what will be the result of compelling people to do certain things, or to leave undone certain other things. Another advantage that the courts have over the legislatures is that their decisions are, in theory at least, based on a consensus of opinion concerning the public interest, rather than a majority vote concerning private interests or opinions. Good law, according to the old theory, is good common sense, set forth by judges of high character and long professional training in such fashion as to command general acquiescence, first among other men similarly trained, and next among the whole community.

In old days this aspect of the matter was strongly emphasized by lawyers and statesmen. Nothing is

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more noticeable in the opinions of the English judges of earlier centuries than the clearness with which they made the reasons for their actions intelligible to a man who would take the trouble to study them. These reasons may not always commend themselves to our judgment to-day; but such as they were, they were plainly and fearlessly set forth. Besides this educational character of the judicial decisions in earlier times, there appears to have been a general acceptance of the duty of jury service by good men—and I may add, an administration of the law which made it more generally possible for good men to accept jury service than is the case to-day. The jurors who took part in these old-fashioned trials received a practical education in applying good legal principles to concrete cases; and they got an understanding of these principles which they carried into many other lines of activity, public and private.

To-day all these things have changed. In a large part of our country a man who serves on a jury in a state court is not allowed to get any idea of proper rules of evidence or of proper principles of law. He is made

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to take a month to transact business the wrong way which, if handled in the right way, could have been finished in half a week. His time and intelligence are placed at the mercy of criminal — and often exceedingly criminal — lawyers. We have been told that one important function of the jury system is to prevent the administration of the law from being too good for the people who live under it. But it makes a great difference whether this result is obtained by educating the people up to the level of the law, or by bringing the execution of the law down to the level of the uneducated intelligence of the people. The former was the old way — the way that still prevails in England, and, speaking broadly, in the Federal courts of the United States. The latter is the practice which seems to prevail in most of the state courts west of the Alleghany Mountains.

For the loss of their authority to protect the jury against the improper artifices and unnecessary delays of unscrupulous counsel, the judges cannot be fairly criticised. It is the legislatures of the country, carrying to an unwarranted extreme the theory of giving the

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prisoner at the bar every possible chance in his favor, that are responsible for making jury trials a mere parody of what they once were. But for the loss of their influence on public opinion as a whole our judges themselves are to a considerable degree to blame. They have stopped explaining the reasons for their decisions and have fallen back too much on mere citations of precedent. They support their views, not by the authority of common sense, but by the authority of office. They say that law derives its compelling force, not from the fact that it is consonant with reason, but from the fact that it has been promulgated in a certain specified way; and that it is their plain duty to consider, not whether a thing is sensible, but whether it is regular. This is one of those half truths which can do a great deal of harm if improperly applied. We saw last week, how the rights of corporate property had been held sacred primarily because they had been used in a manner which was on the whole beneficial to the community; but that if a manager under certain circumstances said so much about the sacredness of his right that he lost sight of the question whether he was using it benefi-

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cially, he endangered the continuance of that right itself. In like manner the regular utterances of the courts have been accepted as law because the nation recognized them as sensible; but when the courts claim to make regularity the test of law, independent of the question of sense, they undermine the public confidence which is necessary for the successful exercise of their authority.

This process has already gone to a dangerous length. When the question of the construction or the constitutionality of an Act is brought up in the courts, the public regards the matter in the light of a contest between a majority exercising its political powers on the one hand, and a minority standing upon its technical rights on the other hand. It is a game of politics *versus* precedent, with the Constitution as umpire. The public does not regard the statute as passed by the legislature, or the precedent as interpreted by the courts, as representing in either case any general public sentiment. Nor is it easy to see why it should. The legislatures for the most part frankly admit that they are striving to advance the claims of the majority by all practicable means. The courts claim to represent, and in a certain sense

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do represent, organized public opinion ; but they discard as inconsistent with modern professional traditions the means which lie at their hand for keeping that public opinion behind them by giving the reasons for their acts. It is hard to guess what will become of our old ideas of the sacredness of law if this condition of things is allowed to go on indefinitely.

Meantime the new theory of representative government has had effects on practical politics scarcely less fundamental than those which it has had upon law. A number of congressmen go to Washington pledged to act in the interests of those who sent them. This pledge is not an explicit one. There will always be men who disregard it in certain emergencies, and who prefer the higher claims of the country to the lower claims of the party or district. But these cases will be relatively few. When Mr. Lamar of Mississippi voted for the gold standard in 1878 because he was convinced that the country needed it, although his constituents thought that a silver standard was better, it excited universal comment and considerable condemnation. Many men who admit in theory that

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their duty to the country is greater and more important than their duty to their constituents disclaim their responsibility for putting this theory in practice. They say frankly that while our government would be a better one if everybody recognized that principle, it will only introduce confusion and injustice to-day if a few good people work for the benefit of the nation while a great many people who are not so good have only the claims of the party or the district in view. They hold that the selfishness of a number of sections of the country, each pulling in its own way, will produce a fairly salutary general result for the country as a whole. Equity between the different parts becomes in their minds a more prominent consideration than the general interests or safety of the whole, which they are willing to trust Providence to take care of. They are in the mental attitude of the little girl who saw a picture of Daniel in the lion's den, and whose sympathies were excited, not so much by the danger or probable fate of the prophet, as by the disadvantageous position of a little lion in the corner who, as she said, probably wouldn't get anything.

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This is a false way of looking at things; but it is very widespread. It represents one of those unwarranted inferences from the doctrine of competition of which I spoke two weeks ago. If a number of different persons are trying to serve the public treasury in their own way, it is wise to let them all do it, and see which way is best. But if those same persons are trying to serve themselves in their own way, at the expense of the public treasury, the case is totally different. The element of benefit to the treasury, which is so conspicuously present in the case of real competition, is conspicuously absent in the case of conflicts and compromises between the representatives of different districts in drafting an appropriation bill or in laying claim for a share of public offices.

To many a representative who goes to Congress, this work of getting appropriations and offices for his district becomes the main part of his duty, for whose sake he can neglect many other parts which are really more important. The worst of it is that his constituents support him in that view. Where this kind of ethics prevails the kind of government which our fathers

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intended is impossible. The legislature not only fails of its primary purpose in making the right kind of laws, but perverts its secondary purpose by exercising the wrong kind of checks upon the administration. When people countenance this way of looking at things, a representative can exact a price for his support of the administration on a matter of public interest; and the more the public interest is concerned in the passage of the measure, the higher the price he can charge.

The power of the executive in the nation, in our states, and in many of our cities, is made dependent upon the consent of a majority of the legislative body by which he is surrounded. This consent was originally required because our fathers, having the experience of England fresh in their minds, were afraid that an executive might seek tyrannical power, and they wanted to bring the restraints of public opinion to bear upon him from every possible quarter. But things have now taken such shape that the representatives, instead of using public opinion to prevent the executive from acting selfishly, use their own power selfishly to prevent the executive from doing what public opinion demands,

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until he satisfies the local and personal claims of the districts which they represent. Does the President want to name the best man for a judgeship? Confirmation is refused because the appointment is not acceptable to a certain number of senators essential to a majority. Does the governor wish to choose the best men for a state commission? He is told frankly that it is not a question of the best man; that if a commission is to be authorized at all, there must be one from White county, and one from Green county, and one from Black county. Under our existing system of representative government the parts have it in their power to exact a price for not standing in the way of the interests of the whole. In the old days people sent representatives to Parliament in order to insure that the injury of one might be the concern of all. To-day we have so changed the underlying principle of the system that the concern of one is made the injury of all.

The bad politics resulting from this perversion of representative government have been even harder to deal with than the bad laws. For the power of making

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bad laws can be, and has been, restrained. A large majority of our states, seeing the chaos which results from indiscriminate legislation without expert knowledge, have either passed state constitutions taking out of the hands of the legislature the power of making any laws, good or bad, on really important subjects, or they have had the mass of old state statutes codified by experts who exercise such large powers of rejection and choice that the existing laws may be said to have been the work of the codification committee rather than of a legislature or series of legislatures. But every restriction of the law-making power of a representative assembly, however salutary in itself, leaves the hands of the representative freer for selfish or sectional activity in other directions. If he is not sent to the capital to make laws, what is he there for? What, indeed, unless it be to get appropriations for his district and offices for his friends? If he cannot do his constitutional duty in making the laws that the people want, what other constitutional duty is left to him except that of preventing the executive from having an unrestricted use of its personal judgment in the government of the country?

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The more we cut off a representative assembly from its primary duty of legislation, the more we throw upon it the work of hampering the administration.

I use the word "hampering" advisedly. If a man is chosen President to govern the country as a whole, and a number of men are sent to Congress to see that the country is not governed as a whole, but with a view to the interests of the separate parts, there is a perpetual threat of a deadlock. Exactly the same thing holds good regarding the relations of a governor to a state legislature, or a mayor to a court of common council. Government is made impossible without the concurrence of a man who is instructed to act on one set of principles, and a board of representatives which thinks it is instructed to act on a different set of principles. There will always be differences of opinion between the two. There will habitually be a deadlock unless some power is found to bring the two into harmony. The Constitution of the United States, and those of most of our states, have made it impossible for the work of government to be done except by agreement between two sets of agents who are bound to disagree.

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But the country must be governed, and somebody must be found to do it. The President may not do it. That stands in the Constitution. Congress may not. That also stands in the Constitution. The only man left to do it under present conditions is the party boss. The Constitution never thought about him at all, and therefore it did not prohibit his activity. The Constitution so regulated the machinery of election that the elected officers would not work in harmony except by a happy accident. There was no guarantee against a complete deadlock. But the Constitution did not regulate the machinery of nomination. If a man gets the power to control nominations both for the executive and for the legislature, he can furnish government of the kind he wants, either good or bad. For he can under all ordinary circumstances refuse to nominate either an executive officer or a district representative who will not work in harmony with his orders. In the United States as it is at the present day the party machinery has appeared to be a necessity for getting the work of government done continuously and regularly.

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We know this well enough in fact. We know that if any important measure needs to be carried through, the essential thing to do is to secure the consent of the leaders of the dominant party. If this is done, all goes well. If not, it is blocked by all sorts of unexpected obstacles. But we are too apt to consider this state of things a mere accident — to think that if we only talk enough against parties, and form enough sporadic independent movements, we can do away with it. This is an error. Parties are much too firmly established to be done away with in this easy manner. The power of party leaders — call them statesmen or call them bosses, as you please — is more securely intrenched than most of us realize. It is a price which we pay for certain safeguards to civil liberty incorporated in the Constitution of the United States. We can hope, if we study real conditions carefully enough, to pass certain laws which will lessen the power of party leaders for evil. We can, if we go to work rightly, develop changes in our political ethics which shall lay the foundation for still further reform. But taking the facts as we find them, with our existing Constitution of the United

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States as it stands, and with our present system of political ethics, the party, working by extra-constitutional if not anti-constitutional means, is the only practical agency for getting the country governed at all.

I do not mean that the provisions of the American Constitution have caused political parties to come into being. They have simply caused them to assume an undue and unnatural prominence. Parties will always exist where one set of men wants one set of measures and another set wants another. Each group will organize for the purpose of securing its end. Each group will find it advantageous to have a good deal of political machinery at its command. The peculiar thing about American parties is that the passage of certain legislative measures is not the chief purpose of their existence. It is a mere incident. The important purpose of an American party is to govern the country. The legislative proposals which it incorporates in its platform are chosen as a means of attracting a few more votes to keep the party leaders in office.

Of course there have been exceptions to this rule at various times in our history. The democratic party

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before the war was so attached to the constitutional principle of state rights that its leaders would rather lose office than sacrifice that principle. The republican party at the time of the Civil War was so committed to the principle of slavery restriction that its leaders would have stayed out of office as a means of securing that end, rather than go into office at the price of neglecting it. But looking over the general history of the country, we are reminded forcibly of the experience of Mr. Tom Johnson with the Pennsylvania conductor, when he was trying to ride over the Alleghanies on the rear platform. The conductor called his attention to the rules of the company forbidding him to stand on the platform. Mr. Johnson, wishing to make as good an argument as possible, asked the conductor what a platform was made for, if not to stand on. But the conductor at once overwhelmed him with the reply, "Mr. Johnson, you're a politician. You should know that a platform ain't made to stand on. A platform's made to get in on!"

There has been one other country and one other age in which political parties have had the same character that they have in the United States to-day.: That was

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in England during the eighteenth century. And it is a noticeable fact that the English government in the eighteenth century had this characteristic in common with the American government in the nineteenth: that the executive and legislative branches of the government were so far separated that no means of harmonizing their action was provided or allowed by the Constitution. Under such circumstances the English parties at the beginning of the eighteenth century, like the American parties at the end of the nineteenth, were primarily occupied with keeping certain men in office, and the passage of legislative measures formed only a very incidental element in their plans. With this striking parallel in view, we may well believe that the separation of powers between the different departments of the government, and the perpetual threat of a deadlock thereby produced, have as an almost necessary consequence the dominion of the party manager: that Walpole and Tweed were but different specimens of the same genus; and that their power, however widely different in its methods of exercise, was an outgrowth of the same cause.

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I have in this lecture tried to survey the field of American politics and indicate the rules under which the game is played. The next lecture will contain some suggestions as to the best way to play it.



## CHAPTER V

### THE POLITICAL DUTIES OF THE CITIZEN



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## CHAPTER V

### THE POLITICAL DUTIES OF THE CITIZEN

**I**N the early days of the republic it was expected that every citizen would devote a part of his time to political life. To the man who was desirous of amusement politics supplied an attractive game. To him who was anxious to do public service it furnished the best, and often the only available channel. To him who was ambitious for tangible success it offered the highest reward.

But as time has gone on this incidental or occasional practice of politics has become very difficult. A man cannot successfully go into public life in this indiscriminate way. We have grown older as a nation, and with increased age has come increased specialization of employment. In a boys' school everybody can spend an hour a day at baseball, and play it well enough for all practical purposes. Twenty years later a few

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of the graduates of that school will have gone into professional baseball, and will be giving all their time to it; the rest will not be playing it at all. The conditions which govern the practice of politics are different in many ways from what they were a hundred years ago. At that time public office furnished almost the only reward of ambition; now there are a great many other rewards, both commercial and professional. At that time the public-spirited man found no recognized channels of service except those that he followed by going into politics; now there are opportunities of service on relief boards, and school boards, and a thousand other kinds of boards, which have little or no connection with our political organization. At that time our communities were so small that each man was pretty well known to his neighbors, so that if he ran for office, they understood whom they were voting for; now he has to spend so much effort telling them about himself in order to stand any chance of getting nominated or elected that what was once an amusement for the intervals of his professional activity has become a most serious matter of business.

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I still think that every American citizen ought to assume political responsibilities. But as I look at the matter, there are at least four different ways in which this can be done; and the obligations which go with these different ways of fulfilling civic duty are themselves widely different. One man may desire to go into politics as a most important part of the business of his life, with the hope of receiving elective offices and attaining a dominant position in the counsels of his party. Another may strive to influence the conduct of our public affairs indirectly, by his activity in behalf of civil service reform and other measures calculated to promote better government. A third may reserve his political activity for special emergencies, when some grave crisis, national or local, justifies him in an exceptional expenditure of time and strength. A fourth may content himself with that general influence on the conduct of political affairs which is exercised by every citizen who forms his moral judgment independently and expresses it fearlessly. One of these four modes of political influence each citizen should undertake to exercise; and, having undertaken it, he should adopt

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the methods and ideas necessary for serving the community in this chosen way. Of course they are not mutually exclusive. A man who has belonged to one of these classes may suddenly find himself transplanted into another, almost without his own knowledge. Some grave crisis may cause the people to select political leaders on account of proved business ability, or on account of the fearlessness which they have displayed in some emergency, rather than through the ordinary channels of party influence. But in a general way the four lines of activity that I have named are tolerably well distinguished from one another.

Let us take the duties of these different classes in order. First, what are the conditions that surround the man who thinks of going into politics as a profession?

To begin with, he must be prepared to take it as seriously as he would take any other profession he might choose. He must accept it as a continuous activity. He must have the necessary time for so doing. He must be willing to bear the disagreeable features incident to the work. People are not going to nominate and elect men without knowing for what they stand,

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and it takes time to show for what a candidate does stand. A great many people talk as though the only thing that a man needed to do in order to convince people of his character was to make them a speech. This is not true. Speeches do not attract as many votes as is commonly supposed, because the people shrewdly suspect that a man may not always be telling the truth. He may not be what he says he is. They want to vote for a person who feels as they feel; and unless a man has certain very peculiar qualities of personal magnetism, his speeches give very little impression about his real feelings. Through newspaper articles a man can reach the voters a little better than through speeches, because the constant reader of a newspaper keeps hearing the same thing day after day until it comes to dominate his thoughts and emotions. But even the most adroitly managed newspaper is a very uncertain means of getting votes. I suppose that the conduct of the *New York Journal* in the last campaign represented the maximum of effort in this line; and the effect of the *Journal* in getting votes for Mr. Hearst was on the whole a disappointment to those

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who had the matter in charge. Personal contact of man with man is what attracts votes and gets offices.

But no man in national politics, or even in state politics, can get into personal contact with more than a very small proportion of the voters whom he wishes to influence. Here is where the great importance of the party machinery comes in. The party is a sort of hierarchy, where each of the rank and file is looked after by the local leader; and the local leaders in turn are influenced by leaders of higher grade, until you come to the great central committee which dominates the whole. This is, I think, a characteristic which all efficient American party organizations have in common. There are different ways of looking after men, which range all the way in merit from education to corruption. But the element of personal contact is present in every case where anything effective gets done. It is customary to talk as though these party machines furnished opportunities to the bad man only. I am inclined to think that they furnish equal opportunities to the good man, provided he is one who is ready to get acquainted with people and find out what they actually

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want: one who does not regard this sort of personal contact as a derogation to his dignity. Of course he will find corrupt men in the party councils, as he will in every other walk of life. He will find systems of ethics which are always crude, and standards of morals which are sometimes low. So he will in law or in medicine, or even in theology. A man who is squeamish about associates should not go into politics, any more than a man who is squeamish about dogmas should go into the Church, or than a man who is squeamish about bargaining should go into certain lines of business. But if his natural tastes fit him for political life, he will find himself morally about as well off here as he could be anywhere else. He will have a fair chance to fight for his convictions, and an opportunity to make all his powers tell most effectively. If a man can acquire weight in the councils of a political party it is an invaluable asset, not only for him personally, but for the cause of good government in general.

It is an asset which should not be lightly thrown away. The man who is in politics professionally has a right, and even a duty, to sacrifice much in order to

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preserve his influence with the party organization. Some people talk as though it were just as easy for a political leader to be independent as it is for the simple voter. They think that, with slight differences, what is good ethics for the voter is good ethics for the politician. With this judgment I cannot concur. The ordinary voter, by making himself independent of party, compels the different parties to bid for his vote, and he does not forfeit any means of influence which he previously possessed. The utmost that he can lose will be the right to go to the caucus of the party that he has abandoned. But the politician who breaks with his party throws aside a power of reaching men and persuading them which control of party machinery gives, without acquiring any similar influence in the other party. In fact, any such defection on his part may lessen the strength of the better element in the organization opposed to him. It may be that the presence of a good man in the republican machine will strengthen the hands of the good men in the democratic machine, by compelling the democratic party leaders to adopt a higher standard of conduct than they would otherwise have

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done. It is not his chance of office alone, but his chance of influencing his associates and setting a mark for his opponents, that the politician throws aside when he deserts his party. Therefore, if a man's record shows that he has been honestly anxious to do public service, I am very slow to criticise him for standing by his organization through a good deal that is rather bad.

But if he is to retain his self-respect and the respect of his associates, the possibility of doing public good must be clearly the dominant motive. This is why certain classes of people have to keep out of politics as a business. Members of the civil service, for instance. A man who is employed by the people at a salary, for non-political work, will if he goes into politics always be under considerable suspicion as to his motives. Nor can a man safely make politics his occupation unless he has some independent means of support to fall back upon, if he has to break with his party. He has no right to put himself in a position where he may have to choose between starvation for his family or disservice to his country. I do not mean that every man who goes into politics ought to be independently

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rich (though the independently rich man does have certain very great advantages in leading a fight for clean politics); but that in default of wealth he ought to have had such training in law or journalism, or some other profession which he can readily resume, as to give him a tangible alternative to fall back upon if political preferment may only be had at the sacrifice of his honor. Otherwise neither he nor those about him can be sure that the public motive is really the dominant one when he stands by the party. If he has not this advantage, and yet is anxious to do all the political service he can, he is far better off in our second group than in the first.

This second group consists of those who aim to promote good government, not by taking political office themselves, but by insuring the passage and enforcement of measures that will raise the general character of our politics as a whole. Any man who undertakes this has plenty of hard work before him; but he does not need to abandon his regular profession, nor to identify himself very closely with any one party. If he can suggest a law which seems likely to produce better government, he does not have to have party

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backing in order to get a hearing. Reform measures often find support in very surprising quarters. Many a politician who himself uses bad methods will encourage the passage, and even the enforcement, of laws to prevent the use of those methods in the future. The reason for this paradox is not hard to find. Almost every man who goes into politics is anxious to leave behind him as good a record as he can. As he gets higher and higher up, he sees that the things that he has used to help himself are regarded by many people as hurtful to the country. He does not feel strong enough to dispense with these means, while his opponents in the party or outside of it continue to use them, because it would cost him a continuance of his power. But he often believes that the passage of a general law which takes that means out of his hands and his opponents' alike will leave him a good chance to retain power and at the same time identify him and his party with an important measure of public service. I do not mean that all politicians will think or act in this way; but there will be enough of them who think and act in this way to give unexpected help to the advocate of clean politics.

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The laws of this kind which we ought to have can be divided into three classes: laws to prevent corruption, laws to fix responsibility, and laws to promote independent voting.

In the first class the best example is the civil service law. Many who read these words can remember a time when nearly the whole salary list of the government was regarded as the prey of spoils-men in the game of politics. The efforts of disinterested men, of different parties, and some of them without definite party affiliations of any kind, made people see that this system was bad both for the efficiency of the public service and for the cleanliness of political life as a whole. Another set of laws to take away the chance for corruption, not so old nor so well worked out as the civil service law but accepted in principle by most of our states, is exemplified by the secret ballot acts, which make it unsafe for a man to buy votes because he never can be quite sure that the goods will be delivered. There are other statutory means of preventing corruption, like laws providing for the publicity of campaign accounts, which have hardly passed beyond the experimental stage.

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Of laws to fix responsibility, the best examples are seen in some of our newer city charters. Under the old system, where a mayor was surrounded by a board of aldermen which had large veto powers and large rights in sanctioning appointments to municipal office, no one could ever tell who was to blame for waste and inefficiency. The mayor could not give a good government if he tried, and therefore could not be held responsible if his government was bad. The aldermen considered themselves accountable only to their supporters and friends in their several districts; and if the interest of the whole community suffered, they disclaimed responsibility for the general result. By giving independent powers to one man, so that he could be praised for good work and blamed for bad work, it was found, not that he abused his powers, but that he sought the credit which resulted from exercising them as well as he knew how. I do not mean that we have yet found the ideal form of city charter. A great deal of public spirit and disinterested service on the part of the citizens is requisite in order to run an American city under any charter, however good. But we have in many places

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removed the worst features of a system that prevailed thirty years ago, which put a positive premium on corruption and prevented anybody, however good or disinterested, from rendering the service which he wanted to.

A law separating the time of local and national elections is a good example of the kind of measure which will promote independent voting. In municipal affairs, except perhaps in cities of the very largest size, there is not the same need of parties that there is in national affairs. Each citizen is interested to have the city's business well done; each citizen ought to know tolerably well the business capacity and character of men who are prominent enough to become candidates for municipal office. But if the municipal election is placed at the same time as the national election, the inevitable tendency is to make nominations a party matter and to let the man's vote for municipal candidates be a good deal influenced by his preferences on the national ticket. If the local election can be put at an entirely different time from the national one, the chance for an independent ticket is infinitely greater; and if in addition we

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can devise what is known as a direct primary law, in which every voter belonging to a given party shall have a fair and equal chance to say who shall be nominated, instead of being compelled to work through a system of caucuses which gives every advantage to the professional politician, we increase the probability of getting businesslike nominations from the parties themselves. The problem of direct primaries is not one which has been fully worked out; and I may perhaps be unduly prejudiced in favor of the reform because I happen to have seen especially good instances of its operation. But I do not know any field of effort which is more promising for a man who wants to do political service, and who has not the time or inclination to go into politics, than the development of the direct primary, or of some similar means which will give the average voter the best chance of expressing his views before the nomination.

It has been found much harder to separate state issues from national ones. The state is so large that people cannot know a man's probable fitness to be governor as they can know his probable fitness to be

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mayor. But I believe that we ought to try to do for our states what we have done for our cities, by removing all artificial attempts to tie local and national issues together. This is why I favor direct election of United States senators by the people. It is not because we send specially bad men to Washington under the present system. It is not because of the effect of the present system on the character and composition of the senate. It is because of the effect of the present system on the character and composition of the state legislatures. A man is sent to the state capital to make some laws for the people of his state; and he finds that his first duty — in some sessions almost his only duty — is to elect a United States senator. A more direct means of preventing the elector from getting the kind of local laws which he wants could not possibly be devised. He is in a large number of cases compelled to vote either for a representative who will make the kind of laws he wants for the state but will send the wrong man to the United States Senate, or for one who will make the kind of laws he does not want for the state but will send the right man to the United States Senate. He

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generally chooses the latter; and that is one of the reasons why the politics of many of our states are so bad. People are not allowed to elect state officers on the basis of state issues.

It is hardly worth while to multiply instances of statutory changes which would promote cleaner politics. While we cannot make men good by Act of Congress or General Assembly, we can make it either a great deal easier or a great deal harder for a good man to do what he wants. The man who succeeds in making it easier does just as much public service and has just as honorable a political career as if he had himself taken office or been identified with the actual government of the country. And of equal importance with the work of the man who secures the passage of new laws of the right sort is that of the man who helps systematically toward the better enforcement and more intelligent administration of the laws which we have already. The work of a man like Judge Lindsey in the Juvenile Court of Denver is in no sense political; but it would be hard to find any one in the whole country whose professional career has had more to do with the improve-

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ment of politics and of government than has Judge Lindsey through the effects, direct and indirect, of his Juvenile Court.

The duty of the third class that I have named — the men who feel that they can take up politics only in grave emergencies — requires very little comment. A nation, like an army, needs a strong reserve; and if a man cannot be in the front rank all the time, he does good work by accomplishing all he can when the reserves are called out. A man in such a position has this special advantage, that, not being bound by party affiliations, he is freer to make his choice, and to let people see that it is an unbiassed choice, in times when party lines have broken up. For leadership in a tremendous uprising of the whole people, it is sometimes an advantage not to have been habitually regarded as the representative of a particular party. And even when such a leader is turned out of office, as he is likely to be before very long, he can have the satisfaction of thinking that he has left behind him a larger sum of permanent results than his followers in the first flush of their disappointment are willing to see. No

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city which has become thoroughly reformed, even for a brief time, ever gets back to practices quite as bad as those which it once had. The forces that overthrew Tweed in New York had a comparatively brief period of success; but no body of New York officeholders has ever again dared to do the things that Tweed and his friends did, or anything like them. The reformers who obtained control of many of our cities a year or two ago are inclined to be discouraged at the reaction which seems to be taking the fruits of victory out of their hands. But that reaction, at its worst, is not likely to carry people back to the point where they were when the reform movement started.

We are in perpetual danger of overestimating the power of a great moral uprising to change the face of our politics, and of being unduly disappointed because these impossible hopes do not turn out realities. It seems to most people as if a great wave of public sentiment, which unites the good and even the indifferently good of all classes and parties, ought of itself to establish a permanent government too strong to be overthrown by politicians. It seems as though the public

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interests in favor of such a movement were so large, and the private interests opposed to it so small, that the contest between the two could be left to take care of itself. But we all know the comment of the man who, when he was told that God was stronger than the devil, objected that the devil made up for his inferior strength by his superior activity. We can hardly expect the leaders of a reform movement, who go into the work at the sacrifice of their regular business, to maintain year after year the continued activity which is characteristic of the successful politician. Still less can we expect it of their followers. A thousand details which an organized party machine would look after are left unheeded. Want of attention to these details alienates some supporters of the movement, and sets others at cross purposes. The underlying principles on which the reformers started remain as important as ever; but the mismanagement of the details distracts attention from these principles until people are willing to sacrifice some of them for the sake of having the government more smoothly run. "Will he not fail me in a great moral crisis?" asks the heroine

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in a recent story of her married sister, who is urging her to accept a match which seems somewhat advantageous. And the reply is, "I cannot say; but he has good manners at his meals. I do not think we have ever had a great moral crisis in our family; and you have to eat meals three times a day." There always will be some idealists in politics to whom the possibility of a great moral crisis is more important than the meals three times a day. These men are to be encouraged. We are never likely to have too many of them. But they will not generally get elected to office. Most of the time their work will be that of critics. Only in emergencies will they be called upon for constructive leadership; but what they can do then makes up for all their disappointments and failures at other times.

There is apt to be a misunderstanding, and a most unwise misunderstanding, between the emergency worker and the man regularly connected with politics. The former regards the latter as hidebound. The latter regards the former as unpractical. But each is necessary in the fight for clean politics; and I may add that each is necessary for the usefulness of the other.

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A friend of mine said to me, not so very long ago: "I know President Roosevelt so well that I can tell him the truth; and I say to him, 'The trouble with you is that you are narrow-minded. You don't like the *New York Evening Post*. You don't see that the *Evening Post* is necessary to make people accept you as the less of two evils.'"

And now we come to our fourth group, which after all must be the largest influence in the politics of the country — the people who do not aspire to leadership, regular or even occasional, but whose votes and opinions and moral judgments make the country what it is. What obligation should be emphasized in their code of political ethics? What can they do for good public morals?

First, they can vote independently. The reasons which prevent the politician from always speaking his mind on a doubtful issue do not apply in the case of the ordinary citizen. He is bound by no set of obligations to the party with which he may have been associated. He has no highly organized influence, built up through a series of years, which he casts aside by break-

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ing over party lines. I do not mean that the voter should try to defeat a party with whose aims he is in general sympathy, merely because of one man whom he dislikes or one measure which he disapproves. He must consider carefully the arguments which can be urged on both sides. But having taken those arguments into consideration, he ought to be guided by his reason and not by his inertia. Parties are likely to be so nearly even in numbers that many elections will be decided by two comparatively small groups of men: the corrupt and the intelligent. If the intelligent men stand by their party instead of voting independently, it will be more desirable for the party leaders to appeal to the corrupt vote by lowering the standards of their platforms and promises than to appeal to the intelligent vote by raising the standard of those platforms and promises. But if the intelligent men are also independent, the chances are that it will be more necessary to bid for the intelligent vote than for the corrupt vote. The leaders will have every incentive to do better instead of doing worse. The man who, having sense enough to find out what is right, does not take the trouble to

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do it, or does not have the courage to act on his convictions, is throwing away an influence which is absolutely necessary for the promotion of good politics.

But the American citizen has a yet broader duty than this. It is not enough to vote rightly on certain specific issues, or to enforce right ideas on certain specific questions of politics and morals. We must get our minds themselves into a judicial attitude. Under the American Constitution the people of our country are encouraged to judge of facts, to take charge of the enforcement of the law, and to select leaders of the kind that they admire. The final test of our ability as a nation rests on the power of our people to judge of evidence quietly; to accept the operations of law, even when it works to their own hurt; to get ideals of success of the kind that will preserve the nation instead of those which will destroy it. Every man who publishes a newspaper which appeals to the emotions rather than to the intelligence of its readers, and to a less extent every man who lightly believes the statements that he finds in such a newspaper, attacks our political life at a most vulnerable point. Every man, whether a member of the

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majority or of the minority, who regards the law as an enactment to promote one set of private institutions at the expense of another, or who coöperates in the passage and administration of laws in this spirit, makes himself responsible for the dangers of growing contempt of law. Every man who admires a public officer for success in serving himself rather than for success in serving others — who respects the man for getting the office rather than for deserving the office — shows himself to that extent unfit to be a member of a self-governing nation, and by influence and example diminishes the capacity of the nation as a whole for self-government. These are the fundamental points of political ethics — these the fundamental issues in all questions of public morals.

For the great political question before us is not whether this or that party shall be kept in power, or whether one law or another shall be passed. The question is rather whether our present system of government shall stand. The history of the world shows that freedom is a very precarious possession, which a nation cannot continue to enjoy for many centuries unless

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it uses it with exceptional wisdom. If people will employ liberty as a means of substituting self-control for external control, they can continue to have it. If they try to make it a pretext for getting rid of all control except that which is furnished by their own desires and whims and wishes, it is taken away by force of circumstances. The Athenian democracy, when it was composed of men trained in the habits of self-command, furnished a magnificent instance of what freedom can do in government and in morals, in art and in literature. But the children and grandchildren of the men who made Athens great could not endure the discipline which their fathers voluntarily accepted. By defiance of the law and by the pursuit of individual selfishness they brought the state to its fall. The Roman freedom lasted longer than the Athenian, because the Romans had been trained in a sterner discipline, and had a respect for law which stood them in good stead for generations. But when freedom became a pretext for selfishness, Rome in its turn fell, first under the tyranny of the emperors, and later under the yoke of the barbarian.

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I am no pessimist. I do not see anything which warrants the fear that we shall repeat in the near future the experience of Athens or Rome — unless it be the mistaken complacency of those optimists who think that we can repeat the mistakes of Athens and Rome without incurring the penalties. But the danger is great enough to make it worth while to impress upon every citizen the duty of inculcating respect for law, even when that law hurts him. It is the underlying spirit of philosophical selfishness which is the chief element of danger — the theory that if each man does what he really wants to do, things will all go well. Every nation that has accepted this philosophy has begun to ride to its own destruction. I do not know what is the solution of the divorce problem. I wish I did. But I do know that the worst thing about divorce at present is that so many people regard marriage as a thing to be made and unmade for purely selfish reasons; and when this conception fully takes root, the days of a nation are numbered. I do not know what is the means of doing away with lynch law. I wish I did. But I do know that the most serious aspect of all the lynchings of which

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we hear, North or South, is the evidence of weakened authority of legal procedure, when brought face to face with the preconceptions and passions of the crowd. When any nation looks upon law as a thing which the individual may use when it suits him and evade or defy when it does not suit him, that nation is losing the main bulwarks of social order. To any man, whatever his position in the state, it has become the paramount political duty to defend the sacredness of law, not only against the active assaults which threaten to overthrow it, but against the more subtle and dangerous attacks of a selfish philosophy which works to undermine it. He must regard, and must persuade others to regard, liberty and the privileges which go with it as trusts to be used only in the public interest, and in behalf of the nation as a whole.

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